

HOUSING RULEMAKING ADVISORY COMMITTEE MEETING PACKET #8



TO: Housing Rulemaking Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: RAC Meeting Packet #8

Housing Rulemaking Advisory Committee Members,

Thank you in advance for preparing for another important Rules Advisory Committee (RAC) meeting. The eighth Housing Rulemaking Advisory Committee (RAC) meeting scheduled for **July 14 from 11am-3pm**. **IMPORTANT NOTE:** Due to public health concerns, this meeting will be held entirely over Zoom. Please do not plan to attend this meeting in person at the DLCD offices in Salem. At the time of the event, please follow the Zoom link in the meeting calendar appointment. Zoom offers both a video conferencing option and a telephone option.

Please review the information provided in this packet thoroughly in advance of the meeting. As usual, we will have a full agenda and look forward to receiving your guidance on these topics.

Additionally, it may be helpful to keep a copy of this packet close by in the event technology does not cooperate as we intend. We will reference packet page numbers when we are discussing specific items.

Request for Review and Comment on Meeting Packet Materials

In the spirit of working quickly and efficiently to meet our deadlines, careful review of meeting packet materials is essential. It is expected that RAC members come to each meeting prepared having read the materials and ready to discuss each topic in detail.

The primary objectives for RAC8 are to:

1. Discuss how the Land Conversation and Development Commission and the Department should review and enforce the Housing Production Strategy Program
2. Clarify how the Department should review the justifications for how cities define “in areas” where higher level middle housing must be allowed.
3. Review updated versions of the Large and Metro Cities and Counties Model Code Parts 1 - 4

RAC Meeting Packet #8 Materials List

Number	Packet Item	Page
1	Agenda	4
2	RAC7 Summary	6
3	MCTAC7 Summary	16
4	HPSTAC5 Summary	17
5	Proposed IBTER Rules (OAR 660-046-0300)	24

6	Discussion Worksheet	35
7	Updated HPS Report Structure Memo	40
8	Reporting, Review, and Enforcement of the HPS Program Memo	49
9	Updated "In Areas" Memo	53
10	Development Feasibility Analysis for Triplexes and Quadplexes	57
11	Large and Metro Cities Middle Housing Model Code Parts 1 – 3	70
12	Cottage Cluster Code Concepts Memo	95
13	HB 2001 and 2003 Implementation Timeline One-Pager	101
14	PAALF Focus Group Summary	102
15	Public Comment Received	103

IMPORTANT NOTE: We have provided a Discussion Worksheet as packet item #6. This worksheet will mirror the discussion anticipated at the meeting. Please use the worksheet to take down notes or formulate your questions for the project team as you review the packet materials.

If you have any questions on the materials in this packet or about the legislation itself, please feel free to contact me via phone or email, my information is listed below. We are grateful for your participation in this important initiative and look forward to working with you!

Thank you,



Ethan Stuckmayer

Senior Planner of Housing Programs | Community Services Division
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Direct: 503-934-0619 | Cell: 503-302-0937 | Main: 503-373-0050
ethan.stuckmayer@state.or.us | www.oregon.gov/LCD

Additional DLCD Staff Contacts for the Rulemaking Process:

Kevin Young, Senior Urban Planner and Point of Contact for Infrastructure TAC

Questions kevin.young@state.or.us

503-934-0030

Robert Mansolillo, Housing Planner and Point of Contact for Model Code TAC

Questions robert.mansolillo@state.or.us

503-934-0053

Samuel Garcia, Housing Planner and Point of Contact for Housing Production Strategy TAC

Questions samuel.d.garcia@state.or.us

503-934-0617

Sean Edging, Housing Policy Analyst and Point of Contact for Regional Housing Needs Analysis Questions

sean.edging@state.or.us

Casaria Taylor, Rules Coordinator and Point of Contact for All RAC Logistics

Casaria.taylor@state.or.us

503-934-0065

Please note: email correspondence should be sent directly to Casaria.taylor@state.or.us who will then distribute to staff or advisory committee members as needed.

Rulemaking Advisory Committee Charge:

Members of the Rules Advisory Committee (RAC) shall provide guidance to agency staff to implement the legislative intent of House Bills 2001 and 2003. While complying with legislative intent, RAC members are asked to work with agency staff to develop recommended rules that:

- *Acknowledge the importance of reasonable regulations such as mass, scale, and design in accordance with clear and objective standards.*
- *Provide for affordable living choices including access to employment and transportation choice.*
- *Allow for phased development consistent with infrastructure supply.*
- *Strive to result in equitable outcomes that benefit marginalized communities and/or people.*

Housing Rulemaking Advisory Committee Virtual Meeting (RAC #8)
July 14, 2020; 11:00 am – 3:00 pm

By Zoom Web Conference

This meeting will be recorded and posted to the DLCD housing rulemaking webpage: <https://www.oregon.gov/lcd/LAR/Pages/Rulemaking.aspx>

Public comment: Members of the that wish to make a public comment should submit their written comment to housing.dlcd@state.or.us



PROPOSED AGENDA

Housing Rulemaking Advisory Committee Meeting #8		
Time	Topic	Who
10:45 – 11:00 am	<i>Login to Webinar and Conference Line</i>	• RAC members
11:00 – 11:20 am	Welcome, Introductions, Announcements, and Agenda Review	• Commissioner Anyeley Hallova, LCDC, and RAC Co-Chair • Sylvia Ciborowski, Facilitator, Kearns & West • DLCD Staff
11:20 am – 11:30 am	Review Overall Rulemaking Timeline and Process	• Sean Edging, DLCD • Sylvia Ciborowski
11:30 am – 12:45 pm <i>(Includes 5-minute break)</i>	Update on Housing Production Strategies <u>Desired Outcome:</u> Review and discuss the draft HPS report and seek RAC input on the LCDC review process and enforcement.	• Ethan Stuckmayer, DLCD • RAC members • Sylvia Ciborowski
12:45 – 1:00 pm	Lunch Break	

1:00 – 2:30 pm (Includes 5-minute break)	Large Cities Model Code: Update on Large Cities Model Code and review and discuss Part 1 (duplexes), Part 2 (triplexes and quadplexes), Part 3 (townhomes) and Part 4 (cottage clusters). <u>Desired Outcome:</u> Review and discuss the 4 parts of the Large Cities Model Code, with a focus on discussing “in areas” and townhomes and cottage clusters.	• Robert Mansolillo, DLCD • RAC Members • Sylvia Ciborowski
2:30 – 3:00 pm	Next Steps and Wrap Up	• Sylvia Ciborowski • Ethan Stuckmayer • Jerry Lidz, RAC Co-Chair

Upcoming Rulemaking Advisory Committee (RAC) and Technical Advisory Committee (TAC) Meetings	
Date/Time	Meeting
July 20, 2020 – 1pm-4pm	Housing Production Strategy TAC Meeting #6
August 6, 2020 – 1pm-4pm	Housing Production Strategy TAC Meeting #7
August 4, 2020 – 9am-12pm	Middle Housing Model Code TAC Meeting #8
August 18, 2020 – 11am-3pm	Housing Rulemaking Advisory Committee Meeting #9
September 24-25	LCDC Meeting

Rulemaking Advisory Committee #7
Zoom-only Meeting
June 9, 2020

Key Insight Summary

Housing Production Strategy – RAC members had significant deliberation on how to structure the Housing Production Strategy to ensure that it deliberately addresses equity and segregation on the basis of race. There is agreement that the HPS should require local jurisdictions to address five key questions to explicitly address fair housing, equity, homeownership/wealth creation, and homelessness. There is also general agreement that the Department should be “bold” in its efforts to address equity and disproportionate housing need directly. It is clear that intent is not enough as people throughout the state are facing immediate and dire housing consequences right now.

In addition to equity, developing a visualization of the HNA/HPS timeline and clarifying how engagement should meaningfully incorporate feedback from the community, especially those with disproportionate housing need, were two key needs raised by RAC members.

Infrastructure Based Time Extension Request Draft Rules – RAC members asked clarifying questions and offered specific feedback on the draft rules. RAC members raised concern about a few topics including the proposed assumed redevelopment rates, the implications of a bond measure to fund an infrastructure improvement failing, and communicating where an IBTER is appropriate in relationship to other avenues (e.g. moratorium). While the approach to equity is not perfect given the time limitations, RAC members in general appreciate that decisionmakers will be required to consider it.

Defining “In Areas” – There was near consensus from members on the RAC that of the two approaches presented, the “Whittle Away” approach was the preferred, though it should bear a different name to avoid the implication that communities will seek to remove areas from middle housing eligibility – a possible alternative name is the “Presumptive” approach. Of course, the key issue in moving forward in this approach will be in defining areas that are less suitable for the development of higher middle housing. This issue will need to balance providing local jurisdictions with sufficient flexibility to plan development in suitable areas with ensuring the underlying intent of HB 2001 is met and not undermined by communities that seeks to remain exclusive.

Attendees:

RAC Members:

- Allan Lazo
- Brian Martin
- Brian Shelton-Kelley
- Chris Pryor
- Chris Storey
- Colin Cooper
- Debbie Aiona
- Derrick Tokos
- Drew Farmer
- Ed Sullivan
- Ellen Miller

Public:

- Alexis Biddle
- Andree Tremoulet
- Anthony Jannelli
- Ariana Buchanan
- Ariel Nelson
- Erik Olson
- Gwenn Baldwin
- Karen Perl Fox
- Katie Hughes
- Kim Travis
- Larisa Varela

- Heather Richards
- Hope Beraka
- Jacen Greene
- Jeannine Rustad
- Jeff Blaine
- Joel Madsen
- LaQuida Landford
- Lynne McConnell
- Mary Kyle McCurdy
- Kimberli Fitzgerald
- Kol Peterson
- Mark Rust
- Martha Fritzie
- Nancy McDaniel
- Peggy Lynch
- Sarah Adams-Schoen
- Shannon Vilhauer
- Stephanie Jennings
- Ted Reid
- Theresa Cherniak
- Timothy Morris

- Laura Kelly
- Lauren Sommers
- Pauline
- Reich
- Savannah
- Sophie McGinley

Staff/LCDC:

- Casaria Taylor
- Sylvia Ciborowski
- Robert Mansolillo
- Samuel Garcia
- Ethan Stuckmayer
- Sean Edging
- Kevin Young
- Commissioner Anyeley Hallova
- Former Commissioner Jerry Lidz
- Anne Debbaut
- Emma Land

Meeting Notes

Statement from Commissioners on racial injustice in light of current events and protests. Revisiting the charge of the Rulemaking Advisory Committee to result in equitable outcomes.

Zoom overview and introductions.

Update on the structure of the Rulemaking Advisory Committee. TAC members will report discussion topics. Recent LCDC meeting on the Medium Cities Model Code and Administrative Rules – public comments open until July 22nd and verbal testimony at the hearing.

Housing Production Strategy

Shannon Vilhauer, TAC meeting summary – “Shelter in place” poem. [Review recording]. Key insights include the role of the Regional Housing Needs Analysis (RHNA). Within a year of getting the data, it will be a community’s response to develop a Housing Production Strategy. Acknowledgement that local jurisdictions do not build housing, and “set the table” and “invite folks in”. A lot of discussion about incorporating equity and fair housing, including the importance of minimum standards (not relegated to best practices).

- Hallova – Everybody on our TAC wants to see the idea of equity included. There has been struggle to place equity within the document. People agree that it needs to be in the “front” (questions asked) and “back” (solutions to those questions). Must ensure the questions asked are specific enough to judge how a jurisdiction is responding to existing or new potential inequities. A lot of this is locational – how do you create strategies to ensure jurisdictions to

restrict housing to specific areas. We should outline what those questions are, which experts could help us identify.

DLCD Staff on Housing Production Strategy progress (what would be required) and key questions as outlined in the memorandum included in the packet.

- Peggy: Homelessness – we want to see that jurisdictions are addressing. We do not want to see cots in a shelter being considered a home. Shelters are meant as temporary means to get to a home. Also advocates including taxpayers in the engagement, to ensure buy in from the people paying for strategies.
- Hallova: The “five” questions. Where does this fit into the four main components. There are some questions that need to be asked and be intentional. They will embed into strategies. Conclusion will ask how a jurisdictions addressed the questions. If you determine equity issues early to shape engagement. Second question – affordable homeownership – This is how the white middle class got their wealth and black middle class was denied. By failing to identify this, we would continue this inequity. Created a new strategy section for price point and tenure. It’s a good exercise to think through homeownership. The tenure piece – is this a minimum requirement or best practice? Where do you ask homeownership v rental?
 - Staff: Conclusion section. The approach has been modified as conversations have continued. Both of these are good to incorporate into these four main components. Additionally, there are ownership opportunities provided in HB 2001 through the townhouse definition.
 - Hallova – Many resources are not geared towards homeownership models. One large barrier are those associated with condominiums.
- Allan: Where we put those five questions – they need to be towards the front. Perhaps this should be a separate section or incorporated into contextualized housing need. If the items aren’t addressed in the HNA, will a city be required to include them as contextualized housing need? Is there agreement that DLCD is somewhat limited by statute language in requiring local jurisdictions to incorporate equity? On proposed structure – it seems that the minimum requirements for engagement are a low bar; why can’t we ask cities to take the broader engagement in the best practices?
- Jacen Greene: I have a question: can the percentage of rent-burdened households figure provided by OHCS in the Need section be disaggregated by race and ethnicity? And a suggestion: under Strategies, can “An analysis of the income and demographic populations that will receive benefit and/or burden from the strategy” be updated to specifically require this type of analysis for groups that have faced discrimination in housing access?
 - OHCS: Will check on data disaggregation and follow up
 - Staff: Do we want a city to analyze impact on all groups or be specific?
 - Jacen: I don’t read it as all groups and worried cities could omit groups.
 - Staff: Further clarification may be necessary on that point there.
- Drew: Keeping track of homelessness count. Want to encourage data collected through Coordinated Care Organizations under new contracts to track social determinants of health. There’s a value add as they have specific charges related to equity. A CCO will have knowledge and access to funding sources (e.g. Medicaid) to help pay for housing.

- Staff: This section is drafted to allow cities to use any data available, but calling out CCOs specifically will be important.
- Mary Kyle: On benefits and burdens – I agree this should be better defined. Wary that some communities will view certain HPS as a “burden” on their ability to exclude and maintain their privilege. On DLCD’s limitations – Absolutely not, Goal 10 has existed since the beginning that forces us to go beyond 2001. On engagement – engagement continues to “look back” while strategies to accommodate need “look forward”. While it’s fine to look back, there needs to be an engagement plan reviewed by the Department including. On the “five” questions – Let’s formalize that into this process to require cities to ask this up front and we have standards for that engagement process. Evaluation of location of HPS – where are we going to see more diverse and affordable housing types likely to be developed? Majority of residential lands are exclusive single-family housing, which is racially exclusive policy in place. I am not sure where location conversations have ended up.
 - Staff: Engagement Plan – As we write the engagement portion, we focus on engagement the city has done to draft the HPS, but how they continue beyond the date of this report is important.
 - Mary Kyle: Between the HNA and HPS requires engagement. It’s in that period.
 - Staff: HPS is written to outline HNA engagement, with producers, consumers, and taxpayers.
 - Mary Kyle: It’s broader, and ensuring there’s a review by DLCD of the engagement plan prior to HPS process.
- Joel: With regard to question #2 on page 76 and with a desire to further emphasize equity, the Commission should consider how the city's Housing Production Strategy affirmatively furthers air housing. More specifically: 1.) How does this strategy combat discrimination? and 2.) How does this strategy overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics?
 - Hallova: These could be in the conclusion to evaluate whether strategies address issues identified.
 - Alan: Not sure where to put this comment, but with regard to Joel's comment regarding the two fair housing-related questions about discrimination and segregation and Hallova's suggestion that she agree these would be good questions for the conclusion section to have jurisdictions evaluate their progress, this also then might necessitate the need to define the baselines for these elements in an introduction section or the contextualized housing needs section. So if the questions to be evaluated in the conclusion were how will these strategies address discrimination and racial segregation, then we might want to have the baselines for these measures in a community defined upfront (and this evaluation often is part of a jurisdiction's Fair Housing Plan/Analysis of Impediments/Consolidated Plan); then set goals for what they intend to accomplish; then in the conclusion, evaluate whether the strategies they put in place accomplished (or are intended to accomplish) what they intended to do.
- Jeff: Contextualized Housing Need – Homelessness component as a requirement under section 6. In my understanding of that section is those criteria are used to determine whether housing need has been met. When I look at the discussion in the draft, it reads as though it’s directions

as to what you would do in the Housing Needs Analysis. This should be “strategy” component and not “identifying need”. Does that section provide authorization to do that?

- Staff: A Housing Needs Analysis should respond to Goal 10, whether it does is a topic for another day, but a HPS is under the umbrella of Goal 10. It’s another opportunity for a check on cities to ensure they are meeting this Goal. LCDC would be provided the authority to review how jurisdictions are meeting their housing need. Goal 10 is driving addressing homelessness into the Housing Production Strategy.
- Jeff: Making it clear that the HNA is the place where you have to consider these things and evaluation questions. You may be able to get farther in addressing by raising this in the HNA.
- Staff: We agree, but we are not in rulemaking for HNAs. The regulatory framework addresses populations by incomes, which may include folks experiencing homelessness. There is room to expand HNA work in this area, but that historically has not happened.
- LaQuida: On engagement as an advocate for unheard and unhoused. Right now, I’m sitting at a local coffee shop and around me are a couple hundred people that are in tents right now. Shelter in place during COVID without showers, laundry, and bathrooms. It’s been heartbreaking to experience this in my neighborhood. Yesterday, I saw police yellow tape with three PPB officers around a black body on the sidewalk, which should not be happening. Folks are in need today, yesterday, and the day before. Connecting people’s stories to this work is very important.
- Ed: How can you craft HPS requirements to deal with the problems of racial and ethnic segregation without data on race and ethnicity?
- Shannon: I’d love to speak to the desire to see a timeline of municipality’s work plan. It would help some of us to see a timeline to see a Housing Needs Analysis, and then components of a Housing Production Strategy. Perhaps there could be a line suggesting opportunities for equity and inclusion, and resources to assist throughout this journey. Some of us are visual and this would help.
 - Staff: Good suggestion. We will work to develop something once the core elements are better solidified.
- Hallova: Having good intentions is not enough and connecting to people’s stories. The bill has an intent around it. I feel like if we are not explicit and intentional, it will end up being good intentions with poor outcomes. We should be bold and shouldn’t shy away from being explicit – let the language reflect that.

Infrastructure Based Time Extension Request Draft Rules

DLCD Staff on IBTER context and overview

Chris Storey on IBTERTAC key issues. The challenge of identifying a “significant infrastructure deficiency” and assumptions on an application. Assumed development rate of 1% for infill and 3% for greenfield by 2023, with an option for a quantifiable validation. Separate process for moratoriums for deficient areas that have issues with SFD development.

Assumed Rate of Development

- Mark Rust: Differentiation with “infrastructure deficient” and “constrained”.

- Staff: There are some areas that are so limited, that it is not feasible to develop a funding mechanism. E.g. unpaved streets in the City of Portland. There may be areas where the infrastructure constraints are so significant that a local gov't wouldn't have the capacity to address them, and would prefer to not allow higher middle housing in these areas.
 - Mark: we have large areas without sewer, so figuring out a plan to accommodate increase density without it.
- Peggy: What we have to figure out is how to deal with the areas without sewer or roads, because those could be good future places for middle housing, but can't be covered in this discussion. Failure of a bond measure would require middle housing to go forward.
 - Staff: Good question. I know we had questions about local gov't using bonds to pay for improvements. The rules allow a local gov't to develop a contingency plan should the bond measure fail.
 - Chris: Part of the inability of the state to require property owners to accept tax increases. Alternative funding mechanisms include funding through rate increases.
- Theresa: 660-0946-0330(2) – Exception for portions of urban Metro counties – what exactly does this mean?
 - Staff: The consensus on the TAC is really applicable to areas within city limits, with the exception of unincorporated areas with urban services.
 - Chris: This provision recognizes that the Metro counties are an exception to the general rule that areas within the UGB but not the city are not eligible for an IBTER.
 - Theresa: May suggest wording to be more clear, but thank you for the clarification.
- Heather: McMinnville – pop 34,000 experiencing significant land constraints for growth. Public facilities planned with density less than today. We're encouraging upzoning and are coming upon capacity issues. With this bill, we applied for funds to do the analysis for IBTER. We don't know what the solutions are and how to pay for those solutions. There are known deficiencies, they are supportive of middle housing. Concerned about the numbers that come out of the TAC for recommended density recommendations. We will have higher density for areas with expected capacity issues.
 - Staff: Quantifiable validation is provided as an alternative development rate where it can be demonstrated.
 - Heather: If we move forward with same numbers in rulemaking, we will be able to put caps on development if we can't provide infrastructure for them.
 - Staff: Good frame of reference for the allowance for middle housing being different than the permitting. Middle housing would still need to meet underlying capacity requirements for acquiring a building permit. It may be that an IBTER has a phasing plan to accommodate middle housing as infrastructure is built out.

Identifying Service Levels

Timing an IBTER before development of Middle Housing Code

- Peggy: The discussion between "areas" for cities to choose to select or de-select. This is also linked to Housing Production Strategies. There are places where it would be unsafe to have

some of these middle housing types right now, but that does not mean it shouldn't be there in the future.

- Mark: It's unlikely that water/sewer is going to meet an IBTER? Could you explain that?
 - Chris: It is more likely that surface or transportation will be issues. Water/sewer is possible, but the incremental change of middle housing is unlikely to trigger an IBTER.
 - Mark: If we talk about nonexistence of water/sewer lines, we're not talking IBTER, we're talking infrastructure-constraint.
 - Staff: Envisioning that infrastructure master plans will change over time to accommodate middle housing. If they do not currently do this, that isn't necessarily a justification of excluding middle housing.
 - Mark: Also depends how you define greenfields. We have
- Mary Kyle: I think I hear different scenarios. Would it be useful for future use if there was a description of when the IBTER process is appropriate, when infrastructure-constrained land is appropriate, and when a moratorium is appropriate and how they are resolved.
 - Staff: That's good input given these topic's complexity.
 - Chris: This is intended to get local gov't to think as to whether this tool is necessary.

Equity and Consideration of IBTERs in Areas of Opportunity

- Hallova: On fair housing type questions – the clarity of those questions could be applied here. So we ask specifically how these will affect communities that have been historically disenfranchised, but it is the right approach. We can evaluate these more effectively if we are specific about the question.
- Allan: Narrative – I want to support that and thank the TAC for looking at how that might play out. There are lots of different permutations for how this might play out. Looking at the goals for a neighborhood is the right approach.

Further time extensions

- Peggy: If the bond fails the first time with a contingency plan. Lack of clarity in the existing rule text.

Fiscal and Housing Impact Statements (FIS/HIS)

- Peggy: Should the fiscal state that there should be a cost to hold the public vote?
 - Staff: Yes I think that's a possibility. Though the more likely option here will be a revenue bond rather than a general obligation bond, which does not require a public vote.
- Jerry: It seems these impacts are not from the IBTER, but rather the actual development.
- Heather: If assumption that Transportation and Stormwater are most impacted. Not all cities have a stormwater utility and transportation is not a supported improvement, so going to a vote may be a bigger consideration.
 - Staff: These point are well taken. Because the process and outcomes can encompass different costs that are hard to define.

IBTER Next Steps – Follow up with survey after meeting. Revisions need to be completed over the next week (draft rules to DOJ on the 16th and to SOS by the end of the month)

- Theresa: Note that there would be a special meeting on August 5th. Is this just for IBTER.
 - Staff: The goal is to adopt IBTER rules, but there may be additional items added.

Large Cities Model Code and Administrative Rules – “In Areas” Discussion

Mark Rust MCTAC Discussion overview – Not much discussion on the townhouse discussion. General assumption that it would be in a greenfield scenario rather than an infill scenario. There is question as to the authority of the Department to require density. Design standards was also a major topic of discussion. We did not talk about “in areas”.

DLCD Discussion regarding “in areas” approaches

- Jerry: Difficult question to ask and concepts are useful. In looking at the balloon approach, it is contrary to what the legislature provides. Providing higher middle housing in those types of areas would not require higher middle housing in all areas and likely excluding areas in higher opportunity areas. On the “whittle away” approach, it seems just like duplexes. So for me, I favor the “whittle away” approach providing more authority for local jurisdictions to whittle away further. Can we define “areas” in some geographic term or using percentages?
- Colin: Echo Jerry’s points. I have struggled with both approaches, given the tension between middle housing and local jurisdiction flexibility.
- Hallova: Initial gut reaction is the opposite to Jerry’s. Balloons are an opportunity to decide where we want this housing to go. Whereas “whittle away” gives opportunities to neighborhoods to whittle away areas. Give possibility to the idea of “in areas” as being “everywhere”
 - Jerry: The whittle away approach based on the premise in the legislation, you don’t allow neighborhoods to say “not here”. We essentially have the same concerns, but played out differently in these scenarios.
- Ellen: Support the whittle away approach. This is an “opt out” option, which will be more effective at incorporating middle housing. Question is regarding “infrastructure constraint” – why do we need to do this? The bill speaks to requiring cities to allow these housing types in areas that allow for single family development. There will be places where you cannot develop a lot given certain factors, which should be determined by the developer.
 - Staff: The allowance is a “zoning” allowance rather than a “permitting” allowance. So the allowance for higher level middle housing is contingent on allowance of SFD in that zone. “Infrastructure constraint” is to capture those scenarios where middle housing provision may not be appropriate.
 - Ellen: If a developer could remedy it, then it shouldn’t be taken off the table.
 - Staff: On the infrastructure side, local gov’ts are not sure what to plan for. If a developer is willing to bring it to the area, but a local gov’t is not obligated to bring these in on any particular schedule.
- Tim: Appreciate the time/effort to put options in front of us. In talking to housing advocates, this topic came up. A close friend of mine that an “area” could be defined in many permutations. I want to emphasize that in my personal opinion and conversations with state legislatures, that “in areas” was intended to reference “everything”. It’s very possible the word “areas” is oversight. We can argue the details, but in my view it should be all encompassing. The balloon approach would discourage development of middle housing and would add a lot of red tape.

“Whittle away” language may be problematic as it encourages people to try and prevent middle housing. I would encourage a different wording.

- Mary Kyle: Appreciate the memo; clearly delineates the two approaches. Perhaps we look for a different word than “whittle away”. The “balloon” approach does not work – it’s not really “higher level middle housing” in comparison to the spectrum of middle housing. This housing is not dense enough for transit to support ridership – tying it to high frequency transit is a bit of a red herring. It also tends to freeze amenities – we should be talking about more opportunities for housing choice in every neighborhood.
- Mark: I agree that the “balloon” approach is not correct. There is the difference between siting and design standards – I don’t think there’s overlap, but what is a siting and design standard vs “area” standard. The Port of Portland example does exclude middle housing in all of those areas. Are those types of exceptions okay? Agree that the “whittle away” approach is the better
- Chris: “Balloon” is “no until you say yes”. These are based on fundamental trust; as a policymaker, I have seen consistent efforts to undermine any policy direction. The potential for abuse is important to me. Which of these have the greatest potential to be undermined. The “whittle away” has a potential for abuse. The “balloon” approach is consistent with planning approaches in Eugene. I want to be able to trust the intention of HB 2001 – to create more housing. If we approach a “balloon” approach is starting small and trying to get big against the current; whereas the “whittle away” approach makes it tougher for abuse potential. E.g. Mupty in Eugene. I would probably start with “everywhere” and come up with consistent rules for what is acceptable to whittle away.
- Nancy: I like the “whittle away” approach. The “opportunity” maps from the last RAC – As a rule, the highest opportunity areas of single-family areas are – by design – far from transit and commercial development. “Balloon” would lock out middle housing in higher opportunity areas.
- Sarah: I did appreciate this memo and work that went into this meeting. I agree with staff that any approach that reinforces segregation on the basis of class and race is not acceptable, and that the “whittle away” approach is the more appropriate path. “Presumptive” approach may be more appropriate. The “balloon” approach puts burden on those who would want to have middle housing allowed, which would run counter to the intent of the bill. On legislative history, Rep Kotek on the third reading said that housing prices are a driver for this bill; really emphasizing that it would provide more affordable options and public dollars moving further. On size and character – they are not necessarily “larger” or more impactful than a SFD home. “Higher” middle housing may take up the same or smaller footprint, may require fewer parking, may lessen the burden on utilities. Given the clear intent to change presumption towards allowing middle housing – we must be careful in assuming these would impose additional constraint over SFD. Additionally, it will reduce barriers to conversion of existing homes. The “presumptive” approach allows for flexibility for local jurisdictions if it is consistent with Goal 10 and HB 2001. The ability to use “siting and design” to maintain neighborhood character; sequestering middle housing to small areas is not part of that flexibility.
- Theresa: As a representative of local jurisdictions, I want to ask for flexibility for local jurisdictions to work some of this through. We seem to be assuming that we are all bad actors in contrast to jurisdictions that seek to make solutions that works best for their jurisdictions. I am concerned that this hasn’t been discussed in the TAC yet. There should be parameters

established in rulemaking and local jurisdictions allowed to make decisions in that framework. Agree with Jerry's comments on equity concerns on the "balloon" approach.

- o Staff: Our intent with this conversation to the RAC is to try and formulate a recommendation to formulate technical pieces on the TAC rather than have the same conversation with the TAC.
- Kimberli: I do support "whittle away" approach for allowing middle housing as was intended. I did have one comment – I support protection of Goal 5 constrained resources, but I don't want to obstruct the location of these middle housing types in jurisdictions with good protections in place. In cities with good design standards, it shouldn't be an automatic exclusion. This should be paid attention to.
- Jesse: Support the "whittle away" approach. Echoing the Commissioner's statement – concern that if we do not have clear standards for what can be excluded, I am concerned that communities that have been the most vocal (wealthy communities) that have prevented a lot of development may be able to use this to undermine the policy intent and potentially drive displacement in poorer neighborhoods.
- Ted: The intent of the legislation was to allow housing variety to maximum extent possible, so I support the "whittle away" approach with clear standards for how cities could whittle away areas, though we cannot come up with every example. The idea of having a threshold (a certain percentage) before triggering greater scrutiny. E.g. may whittle away 10% before needing to make more robust findings.
- Peggy: To Jerry's comments – The bill delineates duplexes from other middle housing that belong in areas. To give legislative history, the bill did not pass the first vote, had to go back and change to pass. Part of the issue is that local jurisdictions get to have this conversation around "areas", but there really is legislative history around that. Senator Gelser that the discussion of "areas" would be part of the bill, which is why she could support it. On clear standards – we need to give DLCD and jurisdictions clear guidance as to what could be whittled away without having a fight over it.
- Colin: Following Jerry, some form of very clear distinction on local jurisdiction flexibility. Many jurisdictions around the Metro are split – with many wanting additional flexibility. Something related to performance is appropriate. Many jurisdictions have planned around areas. We are supportive of middle housing – we would ask for additional flexibility.
 - o Staff: This topic will be the subject of continued conversations on the RAC and the TAC

Next Steps: HPSTAC on June 18, and MCTAC the week following. The next RAC meeting is July 14. IBTERTAC has come to a close – we will send them a refined final draft rule when sent to DOJ with a quick turnaround (by June 22). Will send two survey links – one specific to IBTER and

Placeholder for MCTAC7 Summary

Housing Production Strategy Technical Advisory Committee (HPSTAC) Meeting #5
June 18, 2020; 9 am – 12 pm
Zoom Virtual Meeting

Key Insights Summary

Text - Text

Attendees:

TAC Members:

1. Alexis Biddle
2. Alison McIntosh
3. Allan Lazo
4. Andree Tremoulet
5. Angel Falconer
6. Ariel Nelson
7. Brian Martin
8. Chris Pryor
9. Damian Syrnnyk
10. Dan Riordan
11. Deb Meihoff
12. Diane Linn
13. Ellen Miller
14. Jes Larson
15. Kim Travis
16. Marisa Zapata
17. Mary Kyle McCurdy
18. Michael Boquist
19. Miranda Bateschell
20. Miranda Mishan
21. Nancy Donovan
22. Nancy Donovan
23. Sandy Belson
24. Shannon Vilhauer
25. Stephanie Jennings
26. Ted Reid
27. Tom Armstrong

Public:

1. Alan Chen
2. Alissa Hansen
3. Karen Perl Fox
4. Lauren Sommer
5. Jeff Blaine
6. Savannah
7. Tess Springer
8. Taylor Smiley Wolfe
9. R Hoffman

Staff/Consultants:

1. Anne Debbaut
2. Casaria Taylor
3. Cazmine Bonnot
4. Emma Land
5. Ethan Stuckmayer
6. Kevin Young
7. Robert Mansolillo
8. Samuel Garcia
9. Sean Edging
10. Lorelei Juntunen
11. Kate Srinivasan

Meeting Minutes

Housing Production Strategy Structure

- Introduction: Addressing fair housing and equity in the HPS and statutory/goal authority to address these issues.
- Allan: FHCO has for a long time looked at intersections of Goal 10 and Fair Housing in Oregon. You are right – this is one place where we can see fair housing and equity come forward. It is inherent in Goal 10, but it hasn't been practiced over time. Some of the concepts now are fairly

new in this system – it doesn't mean we should continue business as usual. We should recognize these pieces will evolve; they are certainly not perfect. Appreciate that this conversation about those folks who have been “left out” of opportunities – which the market tends to not serve.

- Diane: Systemic issues deeply inherent in zoning code, which played a central role in segregation. To suggest that PoC land only in lowest income is not true; in order for families to stabilize and build equity, homeownership needs to be incorporated into this process. Let's build in Housing Production that allows people to migrate out of poverty and begin to thrive. If we don't do that, we are not making progress.
- Chris: Agree with previous two. When I look at #1 – when we talk about housing need for those experiencing homelessness, it's a “catch all” category. There are different categories – each requiring a different approach to housing. Chronically homeless folks need permanent supportive housing structure, which requires much more resource and partnerships. It may be helpful for us to develop strategies for different kinds of homeless people.
- Alison: We know that PoC experience homelessness, rent burden, and disparities across the board. Is it possible for cities to think about disparities within these categories by race in addition to households that experience these problems?
 - Staff: I think as a data issue, getting homelessness information is one hurdle and disaggregating that by race is another which becomes more difficult. When that data is available, cities should use that to incorporate strategies to address specific needs. If there is information about different categories in that cohort, that data can inform policy decisions.
- Marisa: Alison was discussing more than homelessness, and yes, we can get all of those disaggregated by race. I don't see race called out here, because PoC have a harder time accessing housing at all income levels due to structural racism. We should call out race explicitly and have a focus on a racial equity analysis. On homelessness, we are talking about producing units. There is no difference in the units to house any kind of homelessness. How you want to make those units produced is a cost count and many homeless folks are willing to accept lower quality housing. There's a difference between producing housing and providing services to find and stay in housing. For counting a unit, the “type” of housing doesn't really matter. It's also a challenge if we assume chronic are the only people who need supportive housing. We need the counts and we need a series of strategies and programs to ensure people can access and stay in that housing. We need to call out programmatic activities that go along with production.
 - Staff: Good framework to think through this report.
- Shannon (Zoom chat): On June 23, Habitat for Humanity will hold a discussion to highlight the connection between racial equity and historic housing discrimination against Black Americans. The event will include Richard Rothstein, author of *The Color of Law*, Habitat Memphis President & CEO Dwayne Spencer, and Axios political reporter Alexi McCammond, and will stream live at www.habitat.ngo/raceandhousing. It is open to the public, and we encourage you to share it with your network of volunteers, donors and other members of your community. This event is open to the public.
- Ariel: There's producing units vs services and programming that is a big departure from my understanding of the land use planning system. What is the role of the land use planning system in this? This is a bit outside of the scope – the concern is that bringing an equity lens is that it's new and welcome, but I am worried we are trying to put too many goals into this narrow HPS. Key things for me include data – that it is available for all cities. It would be helpful if DLCD can name specific data sources that cities can rely on. Certainly, cities can be encouraged to incorporate additional data. Also, what are we asking cities to do here?

- Marisa: Within the scope of this project to get into that, though data is an important consideration. What is about data analytics for counting vs data analytics for programming.
 - Ariel: This conversation is talking about public subsidy and services, which has not been part of the land use system. Is this realistic?
 - Staff: Goal 10 sets out housing needs requirements. Typically, an HNA does the math part of that and a formulation of need based on income/housing type. The collection of those items doesn't fully get to housing need of all residents, so an extension of that requirement is the HPS which calls on cities to address how they are addressing housing needs of all their residents. That's different than planning for housing – it goes beyond that. This is intended to ask “what is the entire housing need?” How a city addresses those needs is a policy decision that cities can decide.
- Stephanie: Interconnections of homelessness and fair housing with our land use system. Part of this is about the role of local jurisdictions. On homelessness, local jurisdictions are a critical partner – they have to remove barriers and provide incentives, but permanent supportive housing requires a lot of resources and partnerships that do not flow through cities, they typically flow through counties and CoC organizations. Cities need to be a partner, but would be hard pressed to be the provider. For an HPS to fully address homelessness goes a bit beyond the scope of HB 2003. On CDBG funds, there is data that jurisdictions need to collect and analyze that DLCD should look into. For jurisdictions without those funds are covered under Balance of State will probably need additional support to collect and analyze that level of data. Important to consider capacity of jurisdictions to do this work.
 - Staff: DLCD team understands that cities are not the only actor, but their role is to promote and be a critical partner. What we've put together does not change that role – it is asking a city what they are doing to be that partner.
- Deb: On homeless contextualization, I am worried if we look for this data, there may be disconnect between people without a home in a shelter and where they would like the opportunity to live. Because there is disparate opportunity for homelessness to find shelter across the state, I would worry that we entrench that disparity.
 - Staff: While the RHNA is happening in the background, it is a pilot study. Because we do not know its fate, we can't rely on a RHNA to do that analysis.
- Kim: On data, in conversations on the RHNA, the CHAS data is the data you use for disaggregation. There's an issue about reliability, especially for smaller cities, so there would need to be a margin of error analysis. On Stephanie's point, I think about opportunity to link up with existing planning – is this an opportunity to link up the work that happens in the consolidated planning process. Interested in hearing from entitlement communities that have had success. An example of an impediment includes zoning barriers to the production of group homes – in that case we have the link that zoning creates an impediments, but we should talk through how to operationalize the linking of this planning work.
- Angel: On the role of cities, there are a lot of opportunities cities have in the development of units. Beyond zoning, cities control the process for an application – the type of review can create real barriers and additional cost and opportunities for neighborhood associations to essentially block development. Cities can also control whether property taxes are levied. We have the ability to acquire land and use it for affordable housing. We can incentivize housing through variances. Cities can convene partners and resources rather than standing as an obstacle. I see huge opportunity for cities to be effective partners in production through land use and other means.

- Marisa: Part of this gets at the philosophy of this document. One of the issues is that the RHNA is a pilot, and whether that moves forward is unknown. Unfortunately, the HPS is the only chance to outline how we want to see this work done. If we were to account for production of needed housing, what would those be and what do jurisdictions need to accomplish that? And what do they have control over? This is not a be-all end-all for jurisdictions to do everything. As local planners, we often defer responsibility of providing resources to other entities. I would hope that we attempt to be leaders and say “we need this to achieve housing” recognizing localities can’t do it all. On homelessness, there are different types of people experiencing homelessness, we tend to be hyper focused on the people we can see (unsheltered), which is the smallest. The largest are kids in K-12 living unsheltered in hotels/motels and doubled up. What we should do is plan for the percentage of needs.
- Ariel: Want to emphasize and support aligning with existing consolidating plan data for entitlement jurisdictions. We would want to hook into the states’ process, and communicate to smaller jurisdictions how they can tie into that process. In terms of data, under contextualized housing need – housing by tenure is not data that cities have with reliability (i.e. not a count or specific level).
 - Staff: Would welcome conversation with entitlement communities.
- Allan (Zoom chat): Just as a response to the issue about what data might be available, which several folks have mentioned, we should be clear as to what we are trying to define/analyze with data. I’m not sure we need data to tell us that disparities exist for certain communities. I think the question is what data sources can jurisdictions use consistently to measure progress being made in ending those disparities.

Staff overview of HPS Structure

- Stephanie: Comments on different sections. I struggle with right geographic area to analyze for homelessness. Many time counts are influenced by where services are offered. Many analyses focus on the County. This could render a city responsible for meeting need for the larger area. Contextualizing opportunity is tricky given what people value being close to. We need to allow for some level of understanding is that opportunities will look different from jurisdiction to jurisdiction.
 - Commissioner Hallova: Opportunity areas was very specifically defined. If we are going to implement a statewide requirement, having a uniform data set they can use will help jurisdictions not need to invent the wheel.
 - Stephanie: I do think there has been consternation about how opportunity areas is defined. It’s a great concept, but how it’s applied needs more work.
 - Hallova: Could this be a starting point? If we leave this open, jurisdictions may not know how to address this.
 - Staff: Data has to do with poverty rate, labor market engagement, low unemployment (and schools).
 - Hallova: Certainly work needs to be done, because it’s a HUD definition, it’s not something that we can reform. Should this be taken completely out?
 - Stephanie: I would encourage DLCDC to look at different jurisdictions to see how these Census tracts play out and have conversation with local jurisdictions.
- Tremoulet: If there’s further discussion on opportunity areas, welcome the chance to add what I’ve learned from Washington Co. We’ve included them in our fair housing plan in 2005. Over time, we learned about things that worked and didn’t work with that data. I have practical and theoretical things to add to that discussion. We have strategies arranged by their functionality, but when a city is thinking about what it wants to accomplish, we’ve talked about an intention

to focus on people who the market is not serving well (race, disability, presence of children). Strongly recommend that upfront, cities are encouraged to think through affordability levels and what types of tenure do they most strongly want to apply strategies do. I have a chart that will help do that. We were able to draw a link between income, tenure, and housing type. Local jurisdictions should gear towards building housing types that tend to serve specific incomes and tenures. Add question - What are communities doing to deal with gentrification/displacement? How is your jurisdiction creating opportunities for PoC, low income, etc. access specific opportunities.

- Hallova: We've added columns for affordability and tenure. It'd be great for people to look at that document.
 - Tremoulet: Important for jurisdictions to identify strategies upfront.
- Sandy: Raise contradicting language between pg 29 and 32, but given a city is not solely responsible for addressing all housing need goes a long way. If we expect these strategies to – on their own – to fully address housing need. That would set cities up for failure. On pg 34, there's a value judgement that services and shelters should be equitably spread through all neighborhoods. One thing I see is among nonprofits, they are moving towards more efficient services and consolidating rather than dispersing. For homeless populations, it will be more efficient if they can access one central resource.
- Mary Kyle: There isn't a requirement to employ any tools – seems to be a simplification of Goal 10 for Cities with specific regulatory methodologies must be looked at. I think that's the intent, but it's overly simplified. I'm worried that if there's too many eggs in the basket, they might not come through. On opportunity areas, seems to be a euphemism to describe neighborhoods that have excluded by race and class. I think it's a great area to focus on to ensure we have diversity of housing, but we should also look at what an area of opportunity is, isn't stagnant. Don't exclude areas that may have need now. How do we ensure that wherever people are living that there are tools to ensure they can benefit from investments and zoning changes.
 - Hallova: My main one is in talking about areas of opportunity is knowing what a city needs to respond to. If a question is too broad, you get nonspecific answers. DLCD staff should separate this into a one page document and get specific wording. We need to identify people who can rewrite this.
- Dan: Clarification on page 33 – on data availability, includes religion and domestic violence survivors – is there data around there?
 - Staff: As we think through these questions, operationalizing these questions and identifying what data is available to respond to these questions. Softening the language may be good.
- Brian: We're hearing that cities will be responsible for what cities can do. On opportunity areas, what the opportunity areas bullet point may result in poor locational outcomes. Perhaps there should be an opportunity for local jurisdictions to put forward their own methodology.
- Joel (Zoom chat): Regarding Housing Strategy Guidance Document... I appreciate the list of tools/actions/policies that a city may implement to facilitate the production of needed housing. I disagree with the document prescribing and defining the affordability targets and as well as tenure that the particular tool/action/policy will create. Jurisdictions should intentionally connect strategies to affordability targets and tenure, DLCD should not influence the jurisdictions perspective of what they could choose as affordability target and tenure target.

Local Jurisdiction Reporting Requirements

Staff overview of existing reporting requirements and how to track HPS implementation.

- Angel: An additional point of data is require cities to provide information on applications that were denied including reasons for denial.
- Stephanie: Anything that we can do to align requirements with 4006 will be important. Even in that process, there have been good conversations about definitions and counting. I am concerned about ability of local jurisdiction's ability to report on tenure.
 - Hallova: You can report on strategies and programs that respond to increasing a tenure type and how many applications took advantage of those programs. You can ask developers what their intent is on permit submittal and what strategies work.
 - Stephanie: The tenure and affordability can vary a lot from initial intent. It would be overall better to estimate tenure and affordability at the census level.
- Dan: On HB 4006, should we also report on expiration of related affordable housing contracts?
- Shannon: Some of us are struggling with understanding opportunities for supporting vs enforcement. Understanding a cities' timeline for this work, but I hear this tension between the required and voluntary. We seem to have all carrots, so we have to make them delicious. Are there some sticks with HB 4006. We have completely worthwhile ambition, but maybe legislation doesn't quite get us where we need to be, but if we don't have sticks, is there a way to incentivize participation.
 - Staff: There may be something there, but this may require more conversation. Maybe there's something additional that cities can do that would build on these requirements.
 - Mary: Would suggest providing more enforcement through legislation to ensure intent of the bill is carried out. Carrots and sticks are fine, but not everybody is hungry. The Department has the ability to withhold TGM and technical assistance grants, including full reporting.
- Tremoulet: We are hungry for data on tenure and affordability and whether that comes annually or at mid-points. This information would be useful for OHCS and DLCD. I am wondering if you have investigated feasibility of investing resources of obtaining data on what the market is doing now in terms of rents and sales prices.
 - Staff: How do they use that and how do they incorporate it into their HPS?
 - Stephanie: Information is available, but at a disaggregated level. Part of what happens with HUD analysis, is they do the analysis and provide that to local jurisdictions. This would result in a much more consistent methodology across the state. What's the best source of information? County assessment data records actual sales amounts than what someone would predict it to be. There are also market studies that look into rents, both of which are much more accurate than tracking at building permit level.
- Ariel: Also consider the data collected can continue to be tracked at mid-point requirement so we can track long-term. Agree we should have more standardized data around the state. Also want to remind on sticks/carrots, it's a matter of capacity for a lot of communities. Think of resources the state can provide, such as fair housing training. Try to align with existing programs.
- Hallova: On tracking, I think what we want to know is tracking affordable rental and affordable homeownership. Anybody who produces those two types of housing will produce any data you want. Really the focus is trying to get to marginalized communities who haven't been able to access these opportunities. If someone submits an affordable project is less likely to be sold.
 - Shannon: [review recording 2:34]

Staff on Mid-Point reporting

- Allan: Is the HPS a 6-8 plan or a 20 year plan that's updated every 6-8 plan

- o Staff: The latter.
- Deb: It might be helpful to give more guidance to cities on volume of work you expect at the mid-point, and could grow into something similar to the end size.
- Stephanie: Want to reiterate that interest is in regulated affordable. Important to consider you have annual reporting through 4006, mid point, and the plan every 6-8 years and important to think through what you want in that.
- Andree: DLCD will be receiving initial plans, the legislation doesn't require DLCD to review or approve them. What's the plan internally for review and analysis? Any intention to provide feedback to jurisdictions as they submit them?
 - o Staff: There is a required review of HPS by the agency and Commission is charged with approving/remanding an HPS – we haven't fleshed out what that looks like but there will be review and oversight.
 - o Hallova: This should be specific so people know what they're being judged on.
 - o Staff: There's a requirement for LCDC to adopt criteria for which to evaluate an HPS
 - o Hallova: When is that criteria developed?
 - o Staff: That's part of the next discussion regarding enforcement.

Enforcement

Staff overview of criteria to evaluate outlined in bill and outlined by LCDC.

- Hallova: They will be judged on the strategies they put forward, correct? Not whether they met specific numbers?
 - o Staff: Yes, it is based on what a city is doing to respond to the need, rather than the actual number. It's whether you are continually not meeting these or avoiding addressing them.
- Ariel: Appreciate the focus on clarity in enforcement. One thing I'd flag related to data, when looking at performance, it's easy to ask whether a city tried to do what it said it would do. There is a concern that in the chart on 33, there's language around tying strategies to unit production. There should be an understanding that one policy/strategy won't be what increases unit production. Want to caution as considering one strategy as effective or not – it happens within a larger context.
 - o Hallova: From a real estate, there's usually disconnect between planning and development community as to what motivates them. I've pushed that the development community provides input. Cities shouldn't be in a vacuum as to what promotes development, they should receive feedback on what works.
- Sandy: On mid-point reporting, what would be useful to cities is DLCD putting a report together on info they're getting from the cities on strategies a city has in place.

Next Steps – Next meeting July 20th. Will continue conversations on enforcement and reporting.

Division 46

660-046-0300

Purpose of Infrastructure-Based Time Extension Request Process

OAR 660-046-0300 to OAR 660-046-0370 establish the form and substance of the IBTER application and review process. The purpose of these rules is to provide submittal requirements, including required data and analyses that a local government must submit with an IBTER, prescribe when a local government is eligible for a time extension in response to an IBTER, and to provide the evaluation process and criteria that the department will use to review IBTERs and issue Time Extensions.

660-046-0310

Entities Eligible to Apply

Local governments, as defined in OAR 660-046-0320, may submit an IBTER.

660-046-0320

Definitions

In addition to the definitions in OAR 660-046-0020 and in ORS 197.015 and ORS 197.758, the following definitions apply to OAR 660-046-0300 to OAR 660-046-0370. In the event of a conflict, these definitions will take precedence.

- (1) "Acceptable service levels" means measures of public facility adequacy defined by common engineering standards of practice, adopted as a policy for a utility, identified by designated authority from the decision-making body of a local government, identified in an adopted utility master plan or special area utility plan, or as necessary to comply with state or federal law.
- (2) "IBTER" means an infrastructure-based time extension request submitted by a local government for an extension of time to adopt land use regulations or amend a comprehensive plan as provided for under Oregon Laws 2019, chapter 639, section 4.
- (3) "Infill and redevelopment areas" means areas with lot sizes of less than one-half an acre that are zoned to allow detached single family dwellings and that are either vacant or developed with detached single family dwellings.
- (4) "Infrastructure" means urban water, sanitary sewer, stormwater, and transportation systems.

(5) “Local governments” means a city outside a metropolitan service district with a population of more than 10,000 and less than 25,000, a city inside a metropolitan service district with a population of more than 1,000 and less than 25,000, any city with a population of 25,000 or more, or any unincorporated portion of a county within a metropolitan service district that is provided with sufficient urban services as defined in ORS 195.065. No other unincorporated areas within urban growth boundaries are included in this definition.

(6) “Significant infrastructure deficiency” means a local government has met the burden of proof to demonstrate a situation or situations where the following exists:

(a) A local government or service provider is unable to provide acceptable service levels within a developed, or developing, area zoned to allow detached single-family dwellings; or

(b) A local government or service provider anticipates that it will be unable to provide acceptable service levels by December 31, 2023, based either on extrapolated current development rates alone, or based on extrapolated current rates and additional anticipated middle housing development.

(c) There is no single service level for demonstrating a significant infrastructure deficiency for transportation infrastructure. Supporting information regarding the magnitude and severity of the deficiency must support a determination that the deficiency has a significant impact on transportation function or safety in the affected area. Higher street classifications, traffic volumes, and impacts to the function of transportation corridors, rather than a single intersection, will help to support the significance of the transportation deficiency. The severity of safety issues may be supported with information such as crash data, posted speed limits, sight distance at intersections, or similar information.

(7) “Time extension” is an IBTER as granted by the department.

(8) “Undeveloped or underdeveloped areas” means areas with lot sizes greater than one-half an acre that are zoned to allow single family detached dwellings and are currently developed at a density of two dwelling units per acre or less.

660-046-0330

Parameters

- (1) Infrastructure, as defined in OAR 660-046-0320(4) and as described in more detail in OAR 660-046-0340, is eligible as a basis for an IBTER application. An infrastructure deficiency is not significant if it would be addressed with infrastructure improvements required in conjunction with the development of a single-family dwelling.
- (2) If a local government is currently unable to issue any new permits for residential development due to a jurisdiction-wide significant infrastructure deficiency, the local government must address that situation through the moratorium process provided in ORS 197.505 and ORS 197.540. The department will not approve IBTER applications that address this type of situation.
- (3) If a local government intends to continue permitting new single family detached dwellings or other development allowed by the current zoning within the area that has a significant infrastructure deficiency while deferring middle housing development within the area, the local government shall demonstrate that the additional infrastructure demand created by middle housing development would cause an unacceptable service level of the infrastructure, or shall provide other valid justification for allowing other development in the subject area while prohibiting middle housing development until the significant infrastructure deficiency is addressed.
- (4) For the purpose of estimating the additional impacts of middle housing development on infrastructure, the local government may assume the following increases in residential development that would create additional impacts upon an area that is significantly infrastructure deficient over the period ending December 31, 2023:
 - (a) The local government shall prepare the baseline estimate for the number of dwelling units per acre produced within a residential zoning district by following the process described in ORS 197.296(5)(a)(A). A local government may add units produced by middle housing allowances, as described in subsections (b) through (f) to estimate residential infrastructure demand within a specified area. A local government may include additional infrastructure demand from other existing uses within the service area, such as higher density housing, schools, businesses, industrial uses, or other uses to estimate a total infrastructure service demand within the area that has a significant infrastructure deficiency.
 - (b) Infill and redevelopment areas may assume a one percent increase in the number of dwelling units produced due to middle housing allowances within the specified residential zone(s), above the baseline estimate described in subsection (a) prior to

1 adoption of middle housing allowances. If some types of middle housing are currently
2 allowed in a residential zone, the local government must adjust the anticipated increase
3 for that area to an estimated fraction of one percent representing additional housing
4 production from the middle housing types that are not currently allowed.

5 (c) Undeveloped and underdeveloped areas may assume a three percent increase in the
6 number of dwelling units produced due to middle housing allowances within the
7 specified residential zone(s), above the baseline estimate described in subsection (a)
8 prior to adoption of middle housing allowances. If some types of middle housing are
9 currently allowed in a residential zone, the local government must adjust the
10 anticipated increase to an estimated fraction of three percent representing additional
11 housing production from the middle housing types that are not currently allowed.

12 (d) The local government may project an increase in anticipated middle housing residential
13 development above the thresholds identified in subsections (b) or (c) if it provides
14 quantifiable validation of such an increase. For local governments located outside a
15 metropolitan service district, the standards for demonstration of a quantifiable
16 validation are provided in subsection (e). For local governments within a metropolitan
17 service district, the standards for demonstration of a quantifiable validation are
18 provided in subsection (f).

19 (e) A local government located outside a metropolitan service district may provide a
20 quantifiable validation by demonstrating an actual increase in residential dwelling units
21 produced above the rates anticipated in subsections (b) and (c), within a zone that
22 allows densities that are no higher than those that would be allowed with adopted
23 middle housing provisions. The evidence may be derived from an existing zone within
24 the local government's jurisdiction, or from another local government within 25 miles of
25 the subject local government.

26 (f) A local government located inside a metropolitan service district may provide a
27 quantifiable validation by demonstrating an actual increase in residential dwelling units
28 produced above the rates anticipated in subsections (b) and (c), within a zone that
29 allows densities that are no higher than those that would be allowed with adopted
30 middle housing provisions. The evidence may be derived from an existing zone within
31 the local government's jurisdiction, or from another local government within the
32 metropolitan service district.

660-046-0340

Infrastructure-Specific Application Thresholds

This rule specifies the circumstances that would justify a time extension for each infrastructure type.

(1) Transportation. A local government may use the following circumstances to justify a transportation-based IBTER:

(a) Areas where the supporting roadways, intersections, or both are operating or anticipated to operate over capacity, not meet currently acceptable service levels, or have existing geometric/safety limitations. Supporting information regarding the magnitude and severity of the deficiency must support a determination that the deficiency has a significant impact on transportation function or safety in the affected area. This type of transportation IBTER applies only to areas where mitigation is planned and is either within the jurisdiction and financial capacity of the local government, or is planned, financed, and scheduled in partnership with county, state, or other governmental or private partners.

(b) Areas that lack adequate emergency vehicle access per current adopted Fire Code standards, and for which mitigation in conjunction with development is not feasible.

(2) Stormwater. A local government may use the following circumstances to justify a stormwater-based IBTER:

(a) Lack of stormwater infrastructure, or adequately-sized stormwater infrastructure, such as storm drainage pipes, curb and gutters, catch basins and inlets, lateral storm connections, regional stormwater facilities, and discharge outfalls that results in not meeting an acceptable service level. An acceptable service level may include metrics for water quantity discharge, water quality, or both.

(b) A downstream stormwater conveyance system deficiency, resulting in localized ponding or flooding and storm pipe back-ups caused by pipes, culverts, or catch basins in disrepair; these problems may be compounded by high groundwater; compacted underlying soils; or backwater from nearby waterways during high flows; any of which that results in not meeting an acceptable service level.

(3) Water and Sewer. A local government may use the following circumstances to justify a water or sanitary sewer IBTER:

(a) A significant infrastructure deficiency in localized (not citywide) water or sanitary sewer service that results in unacceptable service levels for water or sewer services. For example, maintaining minimum water pressure in a water system or exceeding the capacity of existing Infrastructure within a sanitary sewer system.

(b) A localized (not citywide) combined sewer/stormwater system that will exceed capacity as a result of new middle housing units. As further justification the local government shall demonstrate how it would mitigate the deficiency with respect to wastewater capacity and stormwater controls, if both aspects would not meet acceptable service levels. In this case, the local government shall include descriptions and justifications for the IBTER consistent with the requirements for each of the infrastructure types.

660-046-0350

Application Submittal Timeline and Requirements

(1) Local governments requesting a time extension must file IBTER applications with the department as follows:

(a) By December 31, 2020 for local governments subject to ORS 197.758(3).

(b) By June 30, 2021 for local governments subject to ORS 197.758(2) and ORS 197.758(4).

(2) Completeness review. Upon receipt of an IBTER application, the department will conduct a preliminary completeness review within 30 calendar days of receipt and notify the local government of any additional materials from section (3) that are required to make a complete application. Within one week of receiving notification of an incomplete application, the local government shall notify the department if it will provide all, some, or none of the requested additional information. If no additional information will be provided by the local government, the review period specified in OAR 660-046-0360(2) will begin upon receipt of the notification from the local government. If additional information is to be provided, the review period specified in OAR 660-046-0360(2) will begin on the date of receipt of the additional information. The local government must submit all requested materials within 60 calendar days of receipt of a request for additional materials. If the local government does not submit some or all of the requested completeness materials within the 60-day period, the review period specified in OAR 660-046-0360(2) will begin on the 61st day from the notification of incompleteness, and the department will evaluate the application based on the information that the local government has submitted by the end of the 60-day period.

1 (3) Required materials. A complete IBTER application from a local government shall include the
2 information described in subsections (a) through (g):

3 (a) A narrative, graphics, tabular data, and other information as necessary to provide a
4 general description of the significant infrastructure deficiency, including:

5 (A) A description of the infrastructure and the current system capacity. Relevant
6 information from adopted utility master plans, special area utility plans, capital
7 improvement plans, or similar documents and studies. Also, an identification of
8 the service level that will not be met, including identification of the adopted
9 utility master plan or other authority which establishes the service level.

10 (B) A description of the significant infrastructure deficiency. The application shall
11 clarify if capacity is exceeded currently, or is anticipated by December 31, 2023,
12 based on current development trends; or if the infrastructure is only expected
13 to exceed capacity based on additional impacts from middle housing
14 development pursuant to OAR 660-046-0330(4).

15 (C) If the local government finds significant infrastructure deficiency would be
16 caused only by additional middle housing development in the area and plans to
17 continue issuing permits for other types of development within the area, a
18 detailed analysis of how and why existing infrastructure can continue to meet
19 the needs of other types of development, but not middle housing.

20 (D) A description of assumptions used to calculate or estimate system capacity. This
21 includes analysis of current impacts on the infrastructure system; impacts from
22 additional development anticipated to occur based on current zoning; and
23 impacts anticipated from the allowance for middle housing in the areas where it
24 is not currently allowed, as more fully described in OAR 660-046-0330(4).

25 (E) Documentation of the significant infrastructure deficiency sufficient to allow the
26 department to verify that the deficiency exists, including (but not necessarily
27 limited to) items such as; maintenance and complaint records, photographs,
28 modeling results (if available), crash data, a deficiency documented in an
29 adopted utility master plan, or other evidence of deficiency.

30 (b) The name of the service provider if the Infrastructure is owned or operated by another
31 provider, along with a description of any agreements between the local government and
32 service provider for infrastructure improvements.

- (c) A vicinity map showing the boundary of the impacted areas for which the IBTER is requested. If the local government identifies more than one significant infrastructure deficiency (sewer and transportation, for example), the map should show the boundary of each deficiency separately and any areas of overlap.
- (d) A regional map, if applicable, showing the significant infrastructure deficiency that otherwise provides service to the area where an IBTER is being requested.
- (e) If the local government is subject to ORS 197.758(2), a description of the local government's plan for middle housing implementation in the impacted area, including identification of areas intended for duplex-only provisions, and, as applicable, standards to be applied in goal-protected and constrained areas, and areas intended to accommodate triplexes, quadplexes, townhomes, and cottage cluster developments.
- (f) A remediation plan that describes the proposed infrastructure improvement(s) intended to remedy the significant infrastructure deficiency so that the local government may implement middle housing provisions. For each infrastructure improvement project, the description should include, at a minimum:
 - (A) The proposed period of time needed to address the significant infrastructure deficiency, including phasing and contingencies, if applicable.
 - (B) A discussion of the options initially considered for addressing the significant infrastructure deficiency, along with an explanation of how the proposed approach is the most expeditiously feasible approach available to address the deficiency.
 - (C) Explanation of how the improvement project will provide acceptable service levels to anticipated middle housing.
 - (D) Potential funding source(s), including funding commitments from other governmental agencies or private parties, and schedule for project completion.
 - (E) Depiction of the area that will be remedied by the project.
 - (F) Proposed timeline and associated mapping to demonstrate any phasing of the remediation plan where there are several improvement projects identified.
 - (G) A map of all other areas within the local government where middle housing will be implemented during the extension period.
 - (H) If a local government proposes a bond measure or similar financial mechanism that requires voter approval as a means to fund an infrastructure improvement

project, a local government may also propose a contingency plan for funding the infrastructure improvement.

(g) A narrative detailing how the application is in compliance with the Review Criteria in OAR 660-046-0360(3). In response to criterion in OAR 660-046-0360(3)(d), the local government shall provide a map of the local government's jurisdictional area, depicting US Census tract scores based on the Oregon Housing and Community Services Department's Notice of Funding Availability Scoring Criteria Map: (<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=2cb211dbdd3d4cf497d8190283f1402f>). The map identifies census tracts within communities that score low, medium, or high in relation to access to opportunity. Those tracts identified as high opportunity areas have a relatively low poverty rate, high labor market engagement index, and a low unemployment rate. Low opportunity areas have a relatively high poverty rate, low labor market engagement index, and a high unemployment rate. The narrative addressing criterion in OAR 660-046-0360(3)(d) must refer to the mapped areas in relation to the review criterion.

660-046-0360

Review Process and Review Criteria

The department will review Infrastructure-Based Time Extension Request applications as provided below.

- (1) Review and decision-making authority. The department reviews IBTER applications for consistency with the review criteria and the procedural requirements in OAR 660-046-0360. The department will deny IBTERs that do not meet the review criteria or comply with the procedural requirements. The department Director is the decision-making authority for IBTER applications.
- (2) Review Period. Once the local government has filed a timely, complete IBTER application, the department will approve, approve with conditions of approval, or deny an IBTER. The department will issue a decision on an IBTER application as follows:
 - (a) Within 90 days of receipt of a complete application for local governments subject to ORS 197.758(3);
 - (b) Within 120 days of receipt of a complete application for local governments subject to ORS 197.758(2).

(3) Review criteria. The department shall consider the following criteria in the review of IBTER applications:

- (a) Whether the identified deficiency is a significant infrastructure deficiency, consistent with the parameters and infrastructure-specific thresholds established in OAR 660-046-0330 and OAR 660-046-0340.
 - (b) Whether the IBTER application has adequately described and documented the identified significant infrastructure deficiency and has established a boundary for the requested extension area(s), as required by OAR 660-046-0350. The boundary for the requested time extension is a specific area where there is an identified significant infrastructure deficiency.
 - (c) Whether the proposed remediation plan is effective and presents the most expeditiously feasible course of action to enable implementation of middle housing provisions.
 - (d) Whether, in relation to the opportunity area map provided per OAR 660-046-0350(3)(g), the applicant has demonstrated that correction of the significant infrastructure deficiency will either help to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics, or at minimum will not serve to perpetuate these inequities. To assist with this evaluation, local governments may demonstrate that the IBTER application is consistent with a plan of actions over time by the local government and community partners that will reduce barriers to opportunity for all community residents, in all areas within the local governments' jurisdiction.
 - (e) Whether the time period proposed for the IBTER is the minimum necessary to remedy the significant infrastructure deficiency
 - (f) Any other criteria that the department determines are relevant.
- (4) The department may impose conditions in time extensions that it deems necessary to meet the approval criteria or to ensure the time extension is consistent with the intent of these rules, with ORS 197.758, and with Oregon Laws 2019, chapter 639, section 4.

660-046-0370

Duration of Time Extension

1 (1) As provided in OAR 660-046-0350(3)(f)(A), the IBTER must specify when the local government
2 intends to correct the significant infrastructure deficiency. The IBTER must provide a detailed
3 timeline for a complete plan of action that will remedy the significant infrastructure deficiency,
4 which may include phased infrastructure improvements and contingent actions and timelines
5 based on circumstances outside the control of the local government.

6 (2) If, for reasons beyond the control of the local government, the local government cannot
7 complete an approved remediation plan by the deadline specified in the time extension
8 decision, the local government, prior to the expiration date of a time extension, may prepare an
9 amended remediation plan and submit the plan for department consideration. With the
10 exception of application deadlines specified in OAR 660-046-0350(1), the amended remediation
11 plan must be consistent with the provisions of OAR 660-046-0300 through OAR 660-046-0370.
12 The amended remediation plan must explain why the initial approved plan could not be
13 completed on schedule. Department review of the amended remediation plan is not subject to
14 the completeness review period specified in OAR 660-046-0350(2), nor the required decision
15 timelines in OAR 660-046-0360(2). Otherwise, the review process and criteria for the amended
16 remediation plan must be consistent with the requirements of OAR 660-046-0360. Additionally,
17 the department shall evaluate the following considerations in review of any amended
18 remediation plan:

- 19 (a) Whether the local government anticipated or reasonably should have anticipated the
20 contingencies causing delay in the initial remediation plan;
21 (b) Whether additional delay in the enactment of middle housing allowances is warranted;
22 and
23 (c) Whether the allowance for middle housing in the subject area would provide an
24 opportunity for other parties to construct the necessary Infrastructure as needed in
25 association with middle housing development.
- 26 (3) Upon the expiration date of a time extension, the local government must either enact
27 development code regulations implementing middle housing or apply the model code, as
28 applicable, per OAR 660-046-0100 or OAR 660-046-0200.

HOUSING RULEMAKING ADVISORY COMMITTEE

MEETING PACKET #8



TO: Housing Rulemaking Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: RAC Meeting #8 Discussion Worksheet

Housing Rulemaking Advisory Committee Members,

In order to meet our ambitious timeline and schedule, meetings of the RAC will need to be a space for robust conversation and discussion about agenda items. In order to facilitate this type of discussion, we have pulled specific topics, questions, and decision points from the meeting packet into this central discussion worksheet document. The intent of this document is to mirror the flow of the discussion and agenda items and should be used to collect your thoughts, comments, questions, and concerns on specific points.

As you review the meeting packet contents prior to our meeting, please use this worksheet to take down notes or to formulate your questions for the project team. Committee members will also be sent a link to a fillable version of this discussion worksheet as to collect additional questions or comments that may not have been expressed during the meeting.

Thank you,



Ethan Stuckmayer

Senior Planner of Housing Programs | Community Services Division
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Direct: 503-934-0619 | Cell: 503-302-0937 | Main: 503-373-0050
estuckmayer@dlcd.state.or.us | www.oregon.gov/LCD

RAC Meeting Packet Item #7: HPS Review and Enforcement Memo

[#1] Reporting – The department is finalizing the reporting structure for the Housing Production Strategy Program which will likely include a two-pronged approach with a data-heavy annual report built into the existing HB 4006 reporting requirement and a mid-HPS cycle narrative reflection. Are there any specific items not already discussed that you think the department should include as part of these reporting requirements?

[#2] Reviewing the HPS Report – HPS progress will be measured by DLCD staff to ensure that cities are making good-faith efforts to create housing opportunity and address housing needs for the most marginalized of their communities. Though DLCD staff will not be looking at exact unit counts over a limited time frame, what attributes, in addition to the ones described above, should DLCD use, to ensure progress in a city’s HPS process, is being made?

[#3] Reviewing the HPS Report – What factors should DLCD and LCDC use to determine if a city is making a “good faith effort” to increase the production of housing in their city?

[#4] Enforcement Actions – DLCD staff are looking to the RAC for guidance on enforcement criteria related to HPS progress. How should DLCD and LCDC enforce the Housing Production Strategy Program? Are enforcement tiers the right approach? If so, what incentives or consequences should be linked to those tiers? If not, what enforcement criteria would be a better approach?

RAC Meeting Packet Item #8: Housing Production Strategy Report Structure

[#5] Homelessness in the HPS – DLCD has heard that a city’s obligation to provide housing for their homeless communities be directed from a regional level, rather than from a city level. Given that OHCS’ RHNA is only a prototype at this stage of rulemaking, and may not continue past the biennium, what systems can cities begin to put into place in order to adequately contextualize housing need on a regional level, as well as contribute to social and housing infrastructure that supports the homeless community?

[#6] Engagement – Significant additions to the Engagement section have been added in this version of HPS Report structure. Are there any big-picture ideas and/or questions that will need to be addressed as the HPS Report structure becomes finalized in the next draft?

RAC Meeting Packet Item #9: Approaches to Defining “In Areas”

[#7] “In Areas” Discussion Prompt #1 – We are looking to RAC members to provide rationale and guidance on instances in which a specific area, lot, or parcel should be excluded from middle housing provisions.

[#8] “In Areas” Discussion Prompt #2 – Additionally, the project team seeks guidance on how the Department should review the justification a city gives for excluding such an area from middle housing provisions.

RAC Meeting Packet Item #11: Large and Metro Cities Preliminary Model Code

[#9] Large and Metro Cities Model Code Parts 1 – 3 – Please review the updated version of the Large and Metro Cities Model Code which includes Part 1 (duplex), Part 2 (triplex/quadplex), and Part 3 (townhomes). Please provide any comments you may have on Parts 1 – 3 of this document.

RAC Meeting Packet Item #12: Part 4 Cottage Clusters Code Concepts

[#10] Large and Metro Cities Model Code Parts 1 – 3 – Please review the Cottage Cluster Code Concepts memo provided by Angelo Planning Group. Please provide any comments you may have on the concepts analyzed in that document.

[#11] Additional Comments – Please provide any general or additional comments or feedback here.

HOUSING RULEMAKING ADVISORY COMMITTEE

MEETING PACKET #8



TO: Housing Rulemaking Advisory Committee Members

FROM: Ethan Stuckmayer, Senior Housing Planner; Samuel De Perio Garcia, Housing Planner

SUBJECT: Housing Production Strategy Report Structure Memo

Overview

The purpose of this memo is to provide an update for the Rulemaking Advisory Committee on the progress of the Housing Production Strategy Report Structure. This group is charged to outline a proposed organizational structure for the Housing Production Strategy (HPS) as required by HB 2003 for cities with a population greater than 10,000.

The goal is to have a standardized outline which jurisdictions can follow in drafting a Housing Production Strategy Report. This will ensure consistency of documents across jurisdictions for ease of comparison and evaluation. Furthermore, minimum compliance and guidance standards will be articulated through the rulemaking process in order to enforce what is required through HB 2003, as well as to convey additional, non-mandatory goals inspired by the bill.

We have included some discussion questions, which highlight key concepts the Rulemaking Advisory Committee (RAC) will need to consider in the next phase of the rulemaking process. We are seeking RAC discussion on these questions at the July 14 meeting to help guide ongoing refinement of Housing Production Strategy concepts.

The goal for this memo is to:

- 1) Finalize the organizational structure and key elements of the Housing Production Strategies Report – the planning document that cities would ultimately create and submit to DLCD to fulfill the requirements of HB 2003

Updates on Providing Housing for People Experiencing Homelessness

Much conversation has taken place around the role of a Housing Production Strategy in identifying ways that cities should address housing their homelessness communities at all levels of housing. At the RAC meeting on June 9, Committee members overwhelmingly indicated that previously proposed requirements and guidance in these areas did not go far enough. Similarly, DLCD staff have had ongoing discussions with Oregon experts on homelessness research, the Fair Housing Act, and affordable housing. The Land Conservation and Development Commission has also indicated their interest in utilizing the Housing Production Strategy Program to achieve equitable housing outcomes for those who experience disproportionate housing needs and to consider the housing needs of people experiencing homelessness.

Since the last HPSTAC meeting on June 18 there was discussion on providing housing for homelessness at all income levels, but to be directed from a regional level, for all housing types. Initially, this process was discussed in a manner that cities would be held solely responsible for providing data to track homeless counts, as well as provide social and housing infrastructure for homelessness. However, with many jurisdictions across the State facing limited staff capacity and/or limited access to data resources, HPSTAC members found this approach to be problematic. In addition, members voiced that there are nuanced needs among the homeless population that simply cannot be captured through easily-accessible, but still severely limited data. Rather, a regional approach was suggested, where cities would work to contribute to a regional housing need for homelessness.

At the moment, OHCS is currently running a parallel project called the Regional Housing Needs Analysis (RHNA), with the intent to capture regional housing need data across housing types and income levels. The hope is that this project will continue past the biennium. Through this avenue, the RHNA may have the capacity to contextualize a regional homeless housing need, where cities will be asked to contribute to housing and social service infrastructure that best supports the regional homeless housing need total. A RHNA may have the ability to complement or fill in the data gaps where cities fall short. While homelessness data should inform policy and strategy consideration for a City undergoing an HNA or HPS, it has become evident that cities are not in positions to influence housing for homelessness entirely on their own. Comments have shown that cities throughout a region don't provide housing for homelessness at all the same rates, but all cities should have an obligation to meet the needs of the region.

Question #1: DLCD has heard that a city's obligation to provide housing for their homeless communities be directed from a regional level, rather than from a city level. Given that OHCS' RHNA is only a prototype at this stage of rulemaking, and may not continue past the biennium, what systems can cities begin to put into place in order to adequately contextualize housing need on a regional level, as well as contribute to social and housing infrastructure that supports the homeless community?

Housing Production Strategy Report Structure

Pursuant to HB 2003, cities over 10,000 will be required to submit HNAs on a fixed 6-8 year schedule. The HNA will require the local government to identify a housing need that will be expressed as a number of housing units by type and affordability.

Furthermore, cities with population over 10,000 will also be required to submit a Housing Production Strategy Report within one year of HNA adoption. In the HPS Report, the city will be required to identify strategies to support the development of the housing needs identified in the HNA over the 20-year planning period. The sum of all the strategies proposed by a city must collectively be the city's best attempt to respond to the 20-year housing need identified within the HNA.

This Housing Production Strategy Report will be comprised of a five main components:

1. Contextualized Housing Needs describes a city's housing needs as identified by the most recently adopted Housing Needs Analysis. Per HB 2003, this section must include other considerations that describe current and future housing needs in the context of

population and market trends. Additionally, because HNAs only calculate housing need by income group, the analysis often poorly estimates the housing needs of those experiencing homelessness. DLCD proposes that cities conduct an analysis of the specific housing needs of the homeless population as part of this component.

2. Engagement identifies the process by which the city has engaged, or plans to engage, a diverse set of stakeholders in the development of the Housing Needs Analysis and Housing Production Strategy. This section is separated into two parts 1) engagement of needed housing consumers and 2) engagement of housing producers. This section requires that a city engage underrepresented communities in the Housing Production Strategy process and must describe how the insights gleaned from this engagement have impacted the housing production strategies the city plans to implement.
3. Strategies to Meet Future Housing Need outlines the specific tools/actions/policies that the city will implement to facilitate the production of housing. For each strategy, in addition to stating the timeline for adoption and implementation, the city must address how the strategy overcomes patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.
4. Achieving Fair and Equitable Housing Outcomes describe the actions taken by a city that further housing opportunity in the city. In this section, cities must outline specific or planned practices that link housing to transportation, affirmatively further fair housing, provide access in Opportunity Areas, address the equitable distribution of services, and create opportunities for affordable rental housing and homeownership.
5. Conclusion narrates the expected outcome of the proposed housing production strategies. This must include an analysis of the opportunities, challenges, and negative externalities that may result from the collective implementation of the strategies proposed. Specifically, this section must include a description of how the city expects to increase housing options for populations that have a disproportionately high need by answering a series of reflection questions.

Minimum Compliance vs. Guidance

Continued conversation and discussion with both the RAC and the HPSTAC further assist the department in delineating the **requirements** of a HPS Report from the **best practices, guidance, or the “nice-to-haves”**.

As rulewriting begins to come to an end, the department proposes the following Housing Production Strategy Report structure which will allow for consistent reporting across jurisdictions and DLCD staff review – this is especially important in the *Contextualized Housing*, *Engagement* and *Strategies to Meet Future Housing Need*, and *Achieving Fair and Equitable Housing Outcomes* sections. This will help cities provide a baseline of information to DLCD staff, with the opportunity to establish non-mandatory best practices for Housing Production Strategy Report writing.

Based on committee feedback, below is staff's understanding of the HPS Report requirements and guidance thus far. Updates since the last RAC or HPSTAC meeting are shown in red:

Proposed HPS Minimum Requirements	Proposed Guidance/Best Practices
Contextualized Housing Need	
<i>This section will include a short narrative, largely pulled from the jurisdiction's adopted Housing Needs Analysis (HNA). The findings of the city's most recent HNA should be the primary source highlighting Identified Housing Need in a Housing Production Strategy Report.</i> <i>In adherence to HB 2003, Section 4(3), this section shall include consideration of:</i> • Socio-economic and demographic trends of a jurisdiction's population; ◦ Disaggregated by race • Measures already adopted by the city to promote the development of needed housing; • Market conditions affecting the provision of needed housing; and • Existing and expected barriers to the development of needed housing. Other housing needs to respond to for Department review under section 6, subsection 2 of HB 2003. • Housing need for those experiencing homelessness: ◦ To understand the need, a city may use any combination of the following: ▪ Regional homelessness housing need provided by state, regional, or county entity*. ▪ Homeless counts using Point-in-time, McKinney-Vento data sets, or other local houseless population datasets.	<i>Because the HNA may not fully describe the housing need of a city, this section can include (to the extent possible), but is not to be limited to the following information for further contextualization of housing need:</i> • Percentage of housing stock that is market rate vs. subsidized; • Units that are in the development pipeline by housing type (part of HB 4006 produced and permitted reporting); • The proportionate population not typically accounted for in an HNA unique to city circumstances (i.e. student populations, second homeowners) • Redevelopment rates that may impact the provision of preserving existing affordable market-rate units.

▪ Capacity of existing shelters ▪ Vacancy rates ▪ Change in property values or rent over time ▪ Qualitative data that illustrate specific needs of the homeless population ▪ Data collected by Coordinated Care Organizations (CCOs) • Percentage of Rent Burdened Households (furnished by Oregon Housing and Community Services) • Housing by Tenure (owner vs renter) <i>* If RHNA or other mechanism provides such data or analysis.</i>	
Engagement	
<i>This section describes engagement strategies employed to better understand housing needs and barriers to housing, for which audience, and why this audience is being engaged. Specifically, this section should include:</i> • Summary of consumers of needed housing engaged during HNA (i.e., local residents), how deeply city staff reached into and connected with under-represented communities and how the input from those communities translated into HPS actions; and • Summary of housing providers engaged during HPS development (i.e., developers, social service providers) to better understand what providers require to build more of the needed housing and how that information translated into HPS actions; <i>This section should also include a discussion of how the city will utilize or alter actions to directly address issues or concerns raised throughout the engagement process, specifically, by answering the following questions:</i>	The city may also engage in other community outreach activities to better understand housing needs of specific populations. Cities are encouraged to convene a wide variety of stakeholders as part of advisory committees. Some ways cities may engage stakeholders could include, but not be limited to the following methods: open houses, public forums, online tools, and remote meetings.

(a) Who: Who has been historically marginalized in city decisions, and how are you engaging them this time? What policies or procedures have guided or constrained engagement of these communities in the past, and what input can you bring forward from other related conversations with these communities? (b) What you heard: What questions did you ask of each group (consumers of needed housing/housing producers)? What did they tell you? Report by stakeholder group. (c) Influence: How did the information and experiences of marginalized communities/housing providers influence the HPS? List specific examples. (d) Evaluation: Who did you have trouble engaging and why do you think that is? How can engagement processes be done differently going forward? Are there strategies stakeholders asked for, but could not be delivered? Why?	
<i>Strategies to Meet Future Housing Need</i>	
<i>This section will be comprised of a list of all the tools/policies/actions a city proposes to meet its Identified Housing Need. The tools/policies/actions that can be employed by cities can generally be categorized into seven categories:</i> • Zoning, Planning, and Code Changes • Reduce Regulatory Impediments • Financial Incentives • Financial Resources (Local, State, Federal) • Tax Exemption and Abatement • Land, Acquisition and Partnerships • Innovative Options A city may employ any number of tools/actions/policies and is not required to employ a tool/action/policy from each or all of these seven categories. However, the strategies proposed by a city must collectively be	

the city's best attempt to respond to the 20-year housing need identified within the HNA, as one of many parties responsible for housing production, including federal, state, regional and county governments; affordable housing providers; and developers.

For each tool/policy/action a city proposes in this section, the city must include:

- Description of the strategy,
- Timeline for adoption,
- Timeline for implementation, and
- Magnitude of impact, **to the extent known:**
 - Identified Housing Need being fulfilled (tenure and income);
 - Number of housing units that may be created, if possible;
 - An analysis of the income and demographic populations that will receive benefit and/or burden from the strategy, specifically:
 - Low-income communities
 - Communities of color
 - Other communities that have historically been discriminated against, including protected classes and
 - Time frame over which the strategy is expected to impact needed housing

This section should also include a description of how proposed tools/policies/actions expand, alter, or interacts with other tools/policies/actions the city currently has in place or proposes to implement.

For the purposes of prioritization, cities are encouraged to organize tools/policies/actions in one or more of the following ways:

- Cost (low to high),
- Timeframe (short-term to long-term), or
- Identified Housing Need (most need to least need)
- Necessity analysis: The degree to which implementing this tool/policy/action is required in order to produce the needed housing type by income level.

This section may also include a narrative explanation of why it is necessary to prioritize the HPS Report in such a manner. The city can outline jurisdictional priorities and match tools/actions/policies to specific goals.

Achieving Fair and Equitable Housing Outcomes

This section will include a series of questions that jurisdictions will be asked to reflect on, with regards to equitable outcomes when it comes to housing production. This will assist jurisdictions in framing their housing need, develop an appropriate engagement process going forward, and choose appropriate housing production strategies to address housing inequities. The questions are as follows:

- **Location/Transportation.** How is the city working with partners to locate housing and transportation networks so that all residents, including protected classes identified in Federal and Oregon State Fair Housing Law, have equal access to education and occupational opportunity?
- **Fair Housing.** How is your jurisdiction affirmatively furthering fair housing for all resident groups listed under the Federal and Oregon Fair Housing Laws? Affirmatively furthering fair housing means addressing:

• Disproportionate housing needs • Patterns of integration and segregation • Racially or ethnically concentrated areas of poverty • Disparities in access to opportunity o Areas of Opportunity. How is the city creating opportunities for communities of color and low-income communities to live in areas of opportunity with greater access to high-performing schools, employment centers, and services? o Homelessness/equitable distribution of services. How is your jurisdiction ensuring that services and shelters to support the homeless population are equitably distributed? o Opportunities for affordable rental housing and homeownership. How is your jurisdiction creating opportunities for both affordable rental housing and wealth creation via homeownership, especially for communities that have been historically locked out of these opportunities?	
Conclusion	
<i>This section will be a narrative illustrating next steps for jurisdictions and considerations for topics to reflect on for subsequent HPS Reports.</i> • In concluding the Housing Production Strategy Report, the city must consider the following: • Any opportunities, constraints, or negative externalities associated with adoption of the elements of proposed housing production strategies; • Actions necessary for the local government and other stakeholders to take in order to implement the proposed housing production strategy; and • Discussion of how the proposed actions, taken collectively, will increase housing options for population groups experiencing a current or projected disproportionate housing need.	The city may also consider conducting an Alternatives Analysis describing how the city came to propose a specific set of tools/actions/policies. This analysis can help cities make informed decisions on specific tools/actions/policies especially if there are intra-strategy options related to costs, regulatory standards, equity considerations, or other variables.
If this is the city's first HPS Report, how will progress be measured going forward? If this is not the city's first HPS Report, how have strategies documented in the most recent HPS been carried out? What were the results? What has worked? What hasn't? Why or why not?	N/A

A Housing Production Strategy Report must include within its index a copy of the city's most recently completed survey to meet the requirements of HB 4006 and a copy of the ORS 197.178 report, which shows all permits applied for and accepted within the year.	The city may also include any supporting documentation, research, or analysis that outlines the need for specific tools/actions/policies in the Report's index.
If there is a housing need not being addressed, what is the need, why can the city not address this need, and what has been previously attempted in terms of tools/strategies/policies?	N/A
Reflection Questions for Each Jurisdiction. These are different from the aforementioned reflection questions, above, as they help inform the reasoning behind choosing housing production strategies. : • How do the chosen housing production strategies help residents overcome discriminatory housing practices? • How do the chosen housing production strategies help residents overcome racial housing segregation? • How do the chosen strategies affirmatively further fair housing?	

Question #2: Significant additions to the Engagement section have been added in this version of HPS Report structure. Are there any big-picture ideas and/or questions that will need to be addressed as the HPS Report structure becomes finalized in the next draft?

HOUSING RULEMAKING ADVISORY COMMITTEE

MEETING PACKET #8



TO: Housing Rulemaking Advisory Committee Members

FROM: Ethan Stuckmayer, Senior Housing Planner; Samuel De Perio Garcia, Housing Planner

SUBJECT: Reporting, Review, and Enforcement of the Housing Production Strategy Program

Overview

Now that the HPSTAC is finalizing discussion on the specific requirements of the Housing Production Strategy Report, focus is shifted to refining other provisions of the Housing Production Strategy program including how cities will report their Housing Production Strategy implementation progress, how the reports will be reviewed by the department, and what enforcement actions the department may take on cities that routinely do not meet review requirements.

We have included some discussion questions, which highlight key concepts for which the department seeks RAC input during the July 14 meeting.

Reporting

At the last HPSTAC meeting on June 18, DLCD heard general consensus from the HPSTAC that HPS progress reporting for cities should be accomplished through a two-pronged approach – a number/data-focused annual report and a narrative mid-term reflection.

Annual reporting requirements will be accomplished through a process that expands upon the already-existing HB 4006 produced and permitted report. This report requires cities with populations greater than 10,000 to submit, by February 1 of each year, an Excel report to DLCD about the total number of housing units permitted and produced in the previous year.

Mid-term reporting, however, will occur on a 3 or 4-year cycle, dependent on the already-established HNA update schedule. This will take the form of reflection questions for cities. Cities will be asked to describe which tools/policies/actions they have adopted or implemented - or have plans to adopt or implement – since the adoption of their Housing Production Strategy. Cities should describe the circumstances that have prohibited or delayed the implementation of any tools/policies/actions as originally planned in the Housing Production Strategy Report. Lastly, cities will be asked to respond to questions related to housing location, affirmatively furthering fair housing, improving wealth outcomes for marginalized communities through homeownership, and the equitable distribution of homeless services.

These questions are identified in the memo titled *Housing Production Strategy Report Structure* (RAC 8 Packet Item #8). They are as follows:

- **Location/Transportation.** How is the city working with partners to locate housing and transportation networks so that all residents, including protected classes identified in Federal and Oregon State Fair Housing Law, have equal access to education and occupational opportunity?
- **Fair Housing.** How is your jurisdiction affirmatively furthering fair housing for all resident groups listed under the Federal and Oregon Fair Housing Laws? Affirmatively furthering fair housing means addressing:
 - Disproportionate housing needs
 - Patterns of integration and segregation
 - Racially or ethnically concentrated areas of poverty
 - Disparities in access to opportunity
- **Areas of Opportunity.** How is the city creating opportunities for communities of color and low-income communities to live in areas of opportunity with greater access to high-performing schools, employment centers, and services?
- **Homelessness/equitable distribution of services.** How is your jurisdiction ensuring that services and shelters to support the homeless population are equitably distributed?
- **Opportunities for affordable rental housing and homeownership.** How is your jurisdiction creating opportunities for both affordable rental housing and wealth creation via homeownership, especially for communities that have been historically locked out of these opportunities?

Question #1: The department is finalizing the reporting structure for the Housing Production Strategy Program which will likely include a two-pronged approach with a data-heavy annual report built into the existing HB 4006 reporting requirement and a mid-HPS cycle narrative reflection. Are there any specific items not already discussed that you think the department should include as part of these reporting requirements?

Review of the Housing Production Strategy Report

Under Section 6 of HB 2003, the Land Conservation and Development Commission shall adopt criteria for reviewing and identifying cities that have not sufficiently achieved production of needed housing within their jurisdiction or have not implemented their housing production strategy. While it will be the responsibility of cities to report on their efforts to stimulate housing production in their communities, DLCDC staff will be tasked to both review reports and determine whether or not cities are making good-faith efforts to address housing needs of their communities.

As discussed previously, this is measured in the knowledge that cities do not build housing units, and instead rely on the private or non-profit development to do so. However, cities play a major role to help increase unit development through their HPS actions.

HB 2003 offers some guidance on which metrics may be included in the Land Conservation and Development Commission's review of HPS sufficiency:

- a) Unmet housing need as described in ORS 197.296(6),
- b) Unmet housing need in proportion to the city's population,
- c) Percentage of households identified as severely rent burdened,
- d) Recent housing development,
- e) Recent adoption of a housing production strategy or implementation of actions therein,
- f) Recent or frequent failure to address the metrics listed in a – e above, or
- g) Other attributes that the Commission considers relevant.

Likely, a combination of items A – F will be used by the Commission as the review criteria. Additionally, item G provides the Commission the opportunity to add other review criteria.

The Commission has already identified two additional attributes that will likely be part of the sufficiency outline in Section 6 of HB 2003:

- 1. The city's response to address the housing needs of those experiencing homelessness, and
- 2. Increased access to housing opportunity including the elimination of barriers to flexible, fair, and equitable housing options.

Question #2: HPS progress will be measured by DLCD staff to ensure that cities are making good-faith efforts to create housing opportunity and address housing needs for the most marginalized of their communities. Though DLCD staff will not be looking at exact unit counts over a limited time frame, what attributes, in addition to the ones described above, should DLCD use, to ensure progress in a city's HPS process, is being made?

Question #3: What factors should DLCD and LCDC use to determine if a city is making a "good faith effort" to increase the production of housing in their city?

Enforcement

HB 2003, give LCDC and DLCD the authority to take enforcement actions upon jurisdictions that do not comply with the requirements of the HPS program. As discussed previously with the HPSTAC, enforcement actions will serve as a last resort mechanism to ensure cities are increasing the opportunity for housing production in their communities. HB 2003 was not specific on which enforcement actions the Commission or Department could take. Enforcement actions are not likely to be tied to a city meeting specific unit production goals, rather LCDC and DLCD seek to create incentives for good faith efforts to implement and adopt Housing Production Strategies. The enforcement actions should also outline the consequences for noncompliance, possibly including a process by which the department withholds planning and technical assistance funds from jurisdictions who routinely fail to adopt Housing Production Strategy Reports.

The project team is beginning to formulate the framework for these potential enforcement actions. The HPSTAC will have a longer and more detailed discussion on these items at the next meeting on July 20, however we seek additional guidance from the TAC on how to frame this discussion.

An initial thought on how to frame this section would be to define enforcement tiers, or, levels of action DLCD can take when cities are unable to accomplish good-faith efforts, or struggle to implement their HPS. If enforcement tiers are the approach, defining parameters of each level with regards to review

criteria would also be necessary, as well as identifying a system that would help jurisdictions move between tiers. When cities have not adequately reached a specific tier consequences could also be framed, not just as disciplinary measures, such as withholding planning assistance funds, but can also be framed as supportive, such as assigning city staff to additional training related to fair housing or assigning additional DLCD staff assistance to a city.

As cities of various sizes vary with budget and staff time, it is important to note that strategies a city can focus on will also vary significantly, especially as local Councils may have competing priorities. With this in mind, DLCD staff would like to develop an enforcement process that propels cities to advance housing production without creating disparities between cities that do not have the resources to do so, even if they tried.

Question #4: DLCD staff are looking to the RAC for guidance on enforcement criteria related to HPS progress. How should DLCD and LCDC enforce the Housing Production Strategy Program? Are enforcement tiers the right approach? If so, what incentives or consequences should be linked to those tiers? If not, what enforcement criteria would be a better approach?

HOUSING RULEMAKING ADVISORY COMMITTEE

MEETING PACKET #8



TO: Model Code Technical Advisory Committee Members

FROM: Ethan Stuckmayer, Senior Housing Planner; Robert Mansolillo, Housing Planner

SUBJECT: Approaches to Defining “In Areas”

Introduction

At this point in the rulemaking process for HB 2001, we are confronted with the issue of clarifying the meaning behind the phrase “in areas” for the development of higher density middle housing. For Large and Metro cities, this definition is important in determining where “higher middle housing types” (i.e. triplex, quadplex, cottage clusters and townhomes) will be allowed.

As it applies to medium cities, HB 2001 states that duplexes must be allowed on each lot or parcel zoned for residential use. The same language applies to Large and Metro cities where duplexes are concerned, however, there is different language to direct where higher middle housing types are allowed. HB 2001 Section 2 (2) states (emphasis added), “...each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of: (a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings;...”.

“In areas zoned for residential use” is not as prescriptive as “each lot or parcel” and is somewhat ambiguous as to exactly where higher density middle housing is allowed. A key priority in rulemaking for Large and Metro cities is clarifying how this phrase should apply to fulfill the intent of House Bill 2001.

Approach Overview

The department considered two approaches to clarify the meaning of “in areas” – the “whittle” approach and the “balloon” approach. The project team discussed the pros and cons of each with approaches with the RAC at their June 9 meeting and the MCTAC at their June 25 meeting.

“Whittle” Approach

The basis for the “whittle” approach is to allow as many lots or parcels as possible to qualify for the allowance of higher middle housing types. However, the department recognizes the need for cities to ensure that the allowance for higher middle housing types do not preclude their ability to apply protective measures in goal protected areas. Likewise, the department has heard that cities need to balance the allowance of higher middle housing types with the availability of adequate infrastructure systems.

As such, the “whittle” approach would start from a base assumption that all areas zoned for residential use that allow for the development of single-family detached dwellings are eligible for the allowance of

higher middle housing types. From there, a local jurisdiction would consider restrictions on middle housing in areas that are not well-suited for higher middle housing development.

The first priority would include statewide planning goal-protected areas, in which restrictions on middle housing are warranted to protect resources or mitigate risk to life or property from hazards. Additionally, areas with insufficient infrastructure to serve higher middle housing types (i.e. “infrastructure constrained areas”) may warrant additional restrictions on higher middle housing types.

The distinction between infrastructure deficient and constrained areas is important to highlight. “Infrastructure deficient areas” are required to allow all types of middle housing, with a local government applying for an IBTER to allow them time to provide necessary infrastructure improvements. “Infrastructure constrained areas” will likely not see the necessary infrastructure needed to allow for higher density middle housing for the foreseeable future and should therefore be exempt from higher middle housing development. There may be areas where the infrastructure constraints are so significant that a local government wouldn’t have the capacity (funding) to address them, and would prefer to not allow higher middle housing in these areas. Examples of this could be an area of unpaved streets without adequate right-of-way width to accommodate new roads, or areas where water or sewer lines cannot feasibly be installed because of natural or topographic constraints. Local governments will have the opportunity to highlight these areas and propose exemption from higher level middle housing regulations.

Currently, the Large and Metro Cities Model Code is structured to allow middle housing in areas zoned for residential use as described above (all residentially zoned areas that allow for detached single-family dwellings except goal protected areas and infrastructure constrained areas), but local jurisdictions may need additional flexibility to justify further restriction on the allowance of higher middle housing in certain areas.

“Balloon” Approach

The “balloon” approach is based on locational services, such as public transit, existing higher density areas, and mixed residential and commercial use zones. This approach would encourage middle housing development in categorical areas that are already higher density and have transportation or other services.

This “balloon” approach will allow middle housing types in areas that are already higher density and will most likely have services available to promote reduced dependence on auto travel. However, the department identifies two potential complications with the “ballooning” approach:

Equity implications – One clear theme from previous RAC discussions with regard to the Large and Metro Cities Model Code was that attempting to develop locational criteria for the allowance of middle housing had the potential to result in a distorted provision of housing opportunities, which could disproportionately benefit certain communities while precluding high opportunity housing options for communities with less access to opportunity.

Ensuring the intent of House Bill 2001 is fulfilled – While there are undoubtedly discussion and questions surrounding the specific legislative intent of House Bill 2001, there is a clear and certain intent to provide more housing choice in historically exclusive residential areas. One obstacle in achieving this intent is among traditionally exclusive communities that seek to limit the provision of higher middle

housing types to limited portions of the city. This could potentially provide the opportunity for exclusive communities with greater means to better lobby and enforce the prohibition of middle housing in their neighborhoods, which would have the effect of reinforcing segregation on the basis of class and race, a pattern that has been largely upheld by current zoning practice in the United States and Oregon.

Committee Discussion

At the June 25 MCTAC meeting, committee members expressed concern that these two approaches do not represent all of the options available to define “in areas” for higher level middle housing. Some committee members presented alternative approaches to the two presented by department staff. The alternative approaches presented either closely resembled a viable iteration of the “whittle” or “balloon” approach, or took the approach of setting aside certain percentages of neighborhoods for higher level middle housing. The project team had previously considered a similar percentage-based approach but continually found the task prohibitively arbitrary, especially in the context of setting a specific percentage that would apply to all middle housing types, in all neighborhoods, in all areas, of all large and metro cities in the State.

The department understands that while these two approaches may not encompass the entire list of possible iterations to defining “areas”, they do represent the underlying basis within which any definition of “in areas” could reasonably fall. Inherent in both approaches, is the base assumption that the department cannot possibly predetermine all instances in a local government where middle housing is not appropriate. To mitigate this, both approaches give the local governments the ability to make the case for why or where higher level middle housing should not be allowed. The department agrees that this flexibility at the local level is an important competent of these approaches that must be maintained throughout the rulemaking process.

At the June 9 RAC meeting, the committee showed a clear preference for the “whittle” approach, at least in concept. This approach starts with a base assumption that middle housing is eligible in all residential areas zoned for single-family detached dwellings and layers in reductions to the allowance of middle housing in areas that are not well-suited for middle housing development.

The other approach, the “balloon” approach, determines areas that are well-suited for middle housing development, considering locational factors such as proximity to centers and services. The project team and the committees took issue with the “balloon” approach in that this concept takes a static snapshot of a city’s services and locational-based decisions as they exist today. This concept is flawed in that it not only limits the amount of middle housing development potential to areas that could serve to be developed more intensely, but also could perpetuate past inequities and exclusionary policies or land use decisions. For these reasons, among yet others, the project team has dismissed the “balloon” approach as an option.

Operationalizing an Approach

The department feels as though the “whittle” approach solves three primary issues simultaneously:

- 1) The approach provides the greatest development potential and the greatest level of certainty as to where higher middle housing types may be constructed,
- 2) When paired with other siting and design standards in the model code and minimum compliance standards, it is “lightweight” enough to allow for changes in the stock of

developable lands for higher level middle housing over time (as opposed to the “balloon” approach which is static).

- 3) It provides local government with the flexibility to further “whittle” lands that are not appropriate for higher level middle housing based on local circumstances which DLCD could not possibly foresee.

However, if this approach to defining “in areas” is to be operationalized in rule, the department will need to provide clarity to local governments in how their requests to “whittle” will be reviewed. HB 2001 provides some guidance to the department in this effort. The intent of HB 2001, is to open the opportunity for middle housing options in locations in our communities that have historically excluded their development. This legislation overturns historically exclusive single-family zoning in the State of Oregon. As such, any rationale to exempt certain areas from higher level middle housing must not be facially exclusionary or “seemingly neutral”.

Discussion Prompt #1: We are looking to RAC members to provide rationale and guidance on instances in which a specific area, lot, or parcel should be excluded from middle housing provisions.

Discussion Prompt #2: Additionally, the project team seeks guidance on how the Department should review the justification a city gives for excluding such an area from middle housing provisions.

DATE: June 15, 2020
TO: Matt Hastie and Kate Rogers, Angelo Planning Group
CC: Ethan Stuckmayer, Department of Land Conservation and Development
FROM: Becky Hewitt and Tyler Bump, ECONorthwest
SUBJECT: Summary of Triplex/Fourplex Financial Feasibility Sensitivity Testing for Middle Housing Model Code

Introduction

As part of the consultant team led by Angelo Planning Group (APG), ECONorthwest is advising on development feasibility for the Middle Housing Model Code project. This memo summarizes ECONorthwest's analysis of select model code provisions applicable to triplexes and quadplexes. We evaluate the potential impacts these model code provisions have on development feasibility under a range of market conditions. The intent of the analysis is to assist the project team and Model Code Technical Advisory Committee (MCTAC) in refining the triplex and quadplex standards in the draft Large & Metro Cities Model Code (LMCMC).

The model code provisions selected for analysis are those expected to have the greatest potential impact on development feasibility for triplexes and quadplexes, and which were the subject of the most discussion during MCTAC meeting 5. These topics include:

- Minimum off-street parking requirements
- Minimum lot size
- Floor area ratio (FAR)

This memo summarizes the approach to the analysis, the assumptions underlying the sensitivity testing, and the results and findings from the analysis.

Approach

Site and Building Variations

This analysis was limited to triplexes and fourplexes. Our analysis tested a range of lot sizes, parking options, and floor area ratios in various combinations. Based on direction from APG, we limited the range of development standards we tested to options currently under consideration by the MCTAC, including:

- **Minimum lot size:** 3,000 sq. ft.; 5,000 sq. ft.; 7,500 sq. ft.; 10,000 sq. ft. (assumed to match minimum lot sizes for single-family detached homes in the zone).
- **FAR:** 0.6, 0.7, and 0.9 (higher FARs tested only on smaller lots).
- **Parking:** two surface parking spaces (behind building), one driveway space (in front setback), two garage spaces with driveways, one garage space with driveway, and no dedicated parking (on-street only).

SERA Architects provided “test fits” to confirm whether the parking and FAR options would be physically feasible on various lot sizes. We did not test combinations that were identified as infeasible based on physical constraints.

We also did not evaluate remodel / conversion of existing housing units into triplexes or fourplexes or the addition of housing units to a property while retaining an existing home, as these situations are even more highly variable and difficult to predict at this scale. A 2016 report by DECA Architecture as part of Portland’s Residential Infill Project highlighted the challenges associated with conversion to a triplex or fourplex:¹

“Conversion of a single family house into three or more units often involves navigating complex and/or challenging issues such as:

- Transition from the residential to the commercial building code*
- Changes in occupancy from single family to apartments*
- Upgrading walls and floors/ceilings to achieve fire ratings*
- Upgrading walls and floors/ceilings to achieve sound ratings*
- Reducing exterior wall openings to meet commercial code*
- Adding fire sprinkler systems*
- Addressing ADA and accessibility issues*
- Seismic upgrade standards*
- Energy efficiency requirements”*

Variation in Market Conditions

Due to the wide variation in market conditions and land costs statewide, we used three different sets of market conditions to illustrate a range of possible outcomes around the state, using representative financial inputs for each set of market conditions:

- **Cool:** slow population growth, low land cost, low rent & home sales prices.
- **Warm:** moderate population growth, moderate land cost, moderate rent & home sales prices.
- **Hot:** rapid population growth, high land cost, high rent & home sales prices.

¹ The study noted that “conversion of a single family home into a duplex (two dwellings) can often be achieved quite readily and without complex or costly upgrades.”

DECA Architecture, “Residential Infill Project Internal Conversion Report,” October 17, 2016; page 2.

While this approach still oversimplifies the range of potential market conditions, it provides better insights than using a single set of market assumptions that represents a midpoint for the state as a whole. It's useful to think about market conditions as a continuum with a lot of local variation. We have chosen three illustrative examples to help highlight how results might vary in different places. The example market conditions we used were calibrated based on example communities in each category where ECONorthwest has done recent market analysis relevant to middle housing.

Evaluating Feasibility

For the purposes of this analysis, we limited our evaluation of feasibility to development of rental housing because the current Model Code standards and definitions for triplexes and fourplexes do not allow for dividing the lots to provide fee-simple ownership of individual units. While condominium ownership is possible and there are precedents for this, it is less common than rental for triplexes and fourplexes for several reasons:

- Condo development is subject to construction defect liability rules that make it riskier and more expensive for developers and contractors.
- Buyers tend to prefer fee-simple ownership, especially in a neighborhood context (vs. an urban high rise), because the condominium association adds complexity.
- The legal process to create condominiums is complex and expensive enough that it can be burdensome for developers to building just a few units.

Our approach to evaluating feasibility for rental housing considers whether a given development option could generate a sufficient return through the net rental income to justify the costs of new construction and to cover loan payments with a reasonable margin. (Our specific financing assumptions are provided on page 6.) For the purposes of this analysis, we have calculated the net cash flow that the owner or equity investor would receive—the remaining revenue from rents after accounting for vacancy, operating expenses, and loan payments—in the first year the project is complete and fully leased up as a percentage of the equity investment required to build the property. This is sometimes referred to as the “cash-on-cash” return. It is a relatively simple approach to understanding feasibility that does not account for long-term appreciation of the property, rent and operating expense increases over time, income tax benefits associated with owning rental property, or other factors. However, this simpler approach reasonably represents a first pass “does this pencil?” test by a potential developer, when determining whether to pursue something further and before refining the analysis to account for those additional factors.

It is also important to note that demand and need for a given housing type do not necessarily translate into financial feasibility. If the rents that households who might choose that housing are willing and able to pay are too low to support the costs of new construction, development will not be feasible without government assistance.

Assumptions

Our analysis uses typical and reasonable estimates for costs, rents, and expected financial returns. Individual circumstances can vary widely based on site, jurisdiction, and developer-specific variables. Thus, our analysis does not represent an absolute indication of feasibility, but rather a rough estimate of how feasibility might vary with changes to development standards and market conditions.

One simplifying assumption that warrants further explanation is related to land costs. On a per square foot or per acre basis, land costs will tend to be higher where higher densities are possible. (Actual land costs can vary substantially based on the desirability of the location, the extent of site and infrastructure improvements needed, etc.) In zones that largely allow single-family housing, developers of triplexes and fourplexes will be competing for land with developers of single-family homes. If a triplex or fourplex requires the same land area as a single-family home, then a triplex or fourplex will need to generate financial returns that are roughly on par with the returns from building one single-family home in order to compete for that land. However, if a triplex or fourplex requires as much land as 2, 3, or 4 single-family homes, it must compete with the financial returns that those homes would generate in total. To account for this without adding substantial complexity to the analysis, we assume a constant cost per buildable home site that meets the minimum lot size for a single-family, detached home. Thus, the key driver of land cost for a triplex or fourplex is the amount of land required relative to what is needed for a single-family home.

Development Costs

Our cost assumptions are based on past developer and contractor interviews and research on costs in a few example jurisdictions.

Item	Assumption	Notes
Hard Costs	5% less in cool markets	Past work has indicated little variation in construction cost in different parts of the state for larger development projects in particular. For purposes of this analysis, we assume a slight reduction in construction costs in cooler areas for small-scale development; however, remote communities with cool market conditions may face costs higher than those in warm and hot markets if skilled labor is not available locally.

Item	Assumption	Notes
Construction Cost of Units	\$113-\$155 per sq. ft. for projects that can meet residential building code; \$120-\$165 per sq. ft. for projects subject to commercial building code ²	Costs assume mid-level finishes. Actual construction costs can vary widely depending on project design, materials, and finishes. However, many developers and contractors indicate smaller units tend to cost more on a per square foot basis because spaces like kitchens and bathrooms cost more than bedrooms and other habitable space. Larger units often have more of the floor plan devoted to lower-cost space. For purposes of sensitivity testing the impact of different code standards, we hold finish level constant, but approximate variations based on unit size.
Cost of Garage Space	\$35 per sq. ft.	Lower cost due to unconditioned / unfinished space. Translates to just under \$10,000 for a one-car garage.
Cost of Driveways & Surface Parking	\$10 per sq. ft.	Translates to roughly \$2,500 for a one-car driveway.
Lawn & Landscaped Areas	\$2 per sq. ft.	Actual costs can vary widely based on the landscaping selected, but assumption is a mix of sod and limited higher-cost landscaping (e.g., shrubs).
Soft Costs		
Architecture & Engineering	\$30,000-\$40,000	Includes plans, design, engineering, survey, and other professional services. Often quoted as a percentage of hard costs. However, when looking only at triplex and fourplex development, costs are likely to vary little with total construction cost and more with site- and development-specific factors. Assumption is \$30,000 for a triplex and \$40,000 for a fourplex. Fully custom plans, challenging sites, or other issues could substantially increase costs.
System Development Charges, Construction Excise Tax, etc.	Cool markets: \$8,400-\$12,250 per unit Warm markets: \$12,000-\$17,500 per unit Hot markets: \$21,000-\$30,625 per unit	System Development Charges (SDC) rate structures can vary substantially between jurisdictions. Water and sewer SDCs often scale to some degree based on unit size (e.g., number of plumbing fixtures) while other SDCs may or may not vary with unit size. Warm markets were calibrated using Corvallis's fee estimator, while cool and hot markets were adjusted up or down to account for the fact that jurisdictions tend to charge only what development can bear in that area even if they can legally charge more.
Utility Hook-Up Fee	\$3,000	Varies from jurisdiction to jurisdiction, but typically costs several thousand dollars per connection (would be roughly same cost for triplex as fourplex – does not vary with the number of units).
Permit Fees	1.5% of hard costs	Calibrated based on information from Corvallis.
Developer Fee / Overhead	4% of total development cost	Covers the developer's cost to manage the project, not profit / financial return on the investment.

² Triplexes and fourplexes are typically subject to commercial building code standards, unless they can meet the building code definition for townhouses, which requires units attached side-by-side, but does not require units to be on separate lots. For purposes of this analysis, we assumed that combinations of development standards that allow an average unit size of at least 1,000 square feet could plausibly be configured with side-by-side units (not necessarily facing the street) and applied the lower construction costs to these situations.

Item	Assumption	Notes
Land Costs		
Cost per Buildable Single-Family Lot	Cool markets: \$50,000 Warm markets: \$100,000 Hot markets: \$225,000	See discussion above. Assumptions are calibrated to fall within a range of prices observed for land sales in several example communities. Actual land costs can vary significantly with site-specific factors.

Revenue and Operating Expenses

Item	Assumption	Notes
Rent	Cool markets: \$0.85-\$1.75 per sq. ft. Warm markets: \$1.05-\$2.30 per sq. ft. Hot markets: \$1.22-\$2.85 per sq. ft.	Actual rents will vary significantly based on locational amenities, finishes, and unit size. For purposes of this analysis, we hold locational amenities and finishes constant and focus on unit-size variation. In cooler markets, there is less demand for very small units, and also less of a market for large units with higher rents. The rent ranges are intended to be illustrative of potential conditions around the state rather than precisely calibrated to a specific area. The lowest end of the range reflects large units (over 2,400 square feet), while the highest end reflects very small units (under 480 square feet).
Additional Revenue for Parking	Cool markets: \$0 for surface / driveway, \$10 per garage space Warm markets: \$10 per surface /driveway space, \$25 per garage space Hot markets: \$25 per surface /driveway space, \$50 per garage space	People in some areas may be willing to pay more in rent for garage or surface parking space whether parking is rented separately or included in the rent. This is more likely in denser areas, which tend to be warm or hot markets. These rent assumptions reflect the increase in rent per month associated with providing off-street parking.
Vacancy	5%	
Operating Expenses	32% of revenue	This is a standard, simplified assumption for multifamily rental housing.

Financing and Return Assumptions

Item	Assumption	Notes
Maximum Loan Amount	75% of total development cost	Actual loan terms will depend on the details of how the project is being financed, the developer's track record, and the riskiness of the project. These assumptions are intended to reflect a reasonable financing scenario for small-scale development.
Interest Rate	4.75%	
Loan Term	30 years	
Required Debt Service Coverage Ratio	1.25	

Item	Assumption	Notes
Cash-on-Cash Return Requirements	Cool markets: 5% Warm markets: 6% Hot markets: 7%	Actual return requirements for equity investors will depend on a variety of factors specific to the developer and the project. We assume those investing in a cooler market (who are likely to be locals for rental properties of this scale) will have to be willing to accept a lower return than those working in a hot market. However, returns below 5% may not meet required debt service coverage ratios to secure a loan.

Results and Findings

This section summarizes our results and key findings from our analysis by topic.

Part 1: Impact of Parking & FAR by Lot Size

This analysis tests how variations in floor area ratio and parking (i.e., surface, garage, or on-street only) affect feasibility on a range of lot sizes. Note that in Part 1 of the analysis, we assume that the lot sizes tested are the same as the lot size for single-family homes in the zone and look at lot size only as a way to understand how the parking and building size vary with lot size. (Part 2 tests the impact of lot sizes that are larger than the minimum for single-family detached housing in the zone.)

Key Findings: Unit Size and FAR Impacts

FAR, lot size, and parking requirements interact with each other to determine the amount of floor area that can be built on the site, which drives the unit size. Unit size is an important driver of rents and costs. The optimal size range will vary by jurisdiction depending on market conditions and how costs (e.g., fees and SDCs) scale with different unit sizes. However, we observed several trends related to unit size:

- Within the range of standards tested, when the lot size for triplex/fourplex is the same as the minimum for single-family detached homes, the differences in feasibility are mostly driven by differences in the potential rent vs. development cost at different unit sizes. (See Exhibit 1 and Exhibit 2 on page 9.) **Very small units generally showed low financial returns**, though the threshold for fourplexes was lower than that for triplexes:
 - Fourplexes: Average unit sizes under about 700 square feet generally were not feasible.
 - Triplexes: Average unit sizes under about 850 square feet generally were not feasible.
- **For small lots, a higher FAR is important for allowing units that are both physically and financially feasible.**
- In some cases, we see decreasing returns to scale with larger unit sizes. For example, with some prototypes, larger units without garages show lower returns than smaller units with garages. However, developers do not have to build to the maximum FAR

allowed. Consequently, **higher FAR allowances do not necessarily create problems for feasibility, but they may not help past a certain point in some markets.**

Key Findings: Parking Impacts

Our analysis shows that **the cost of providing parking (up to 2 spaces in total for a triplex or fourplex) is not in itself a major issue for feasibility.** The returns for prototypes with 2 off-street spaces are generally only slightly below those with no parking if the average unit size is roughly the same. **However, the space dedicated to parking can be an issue if it limits building size.** If more parking spaces were required than we tested (e.g., 1 space per unit), this would have more impacts on the possible building footprint and could trigger regulations that require more circulation area (e.g., requiring a turnaround area so that cars do not back out of the driveway). **On small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint.**

Garages may limit the impact on building footprint, but if they count toward a limited FAR allowance, they take up too much of the limited floor area for a smaller development to make sense in most cases. Since garages are not required—although in some cases they reduce the estimated financial returns—a developer could choose surface parking if that offered a better return and was physically feasible on the site.

Other Findings

- **Triplexes generally show lower returns than fourplexes.** Although they enable somewhat larger units, some of the fixed costs (e.g., land) are spread across fewer units. Triplexes may only be able to meet targeted investment returns for a few regulatory scenarios in any given market.
- **Triplexes and fourplexes will likely be challenging to develop in cool markets under any of the regulatory scenarios tested.** The lower financial returns anticipated in these areas will likely mean a smaller pool of potential builders and investors and challenges securing financing.

Feasibility Results by Regulatory Scenario

Exhibits 1 and 2 on the following page show the following for each regulatory scenario (i.e., each combination of lot size, FAR, number of units, and parking that we tested):

- Maximum average unit size (pale yellow bars).
- Estimated financial returns for each set of market conditions (blue diamonds for cool markets, orange circles for warm markets, and red triangles for hot markets).
- Target financial returns for each set of market conditions (blue dashed line for cool markets, orange dashed line for warm markets, and red dashed line for hot markets).

Where the estimated returns exceed the target returns for that market (shown as the marker being above the dashed line of same color), this indicates a greater likelihood of financial feasibility for that development. **This analysis is intended to provide a rough indication of**

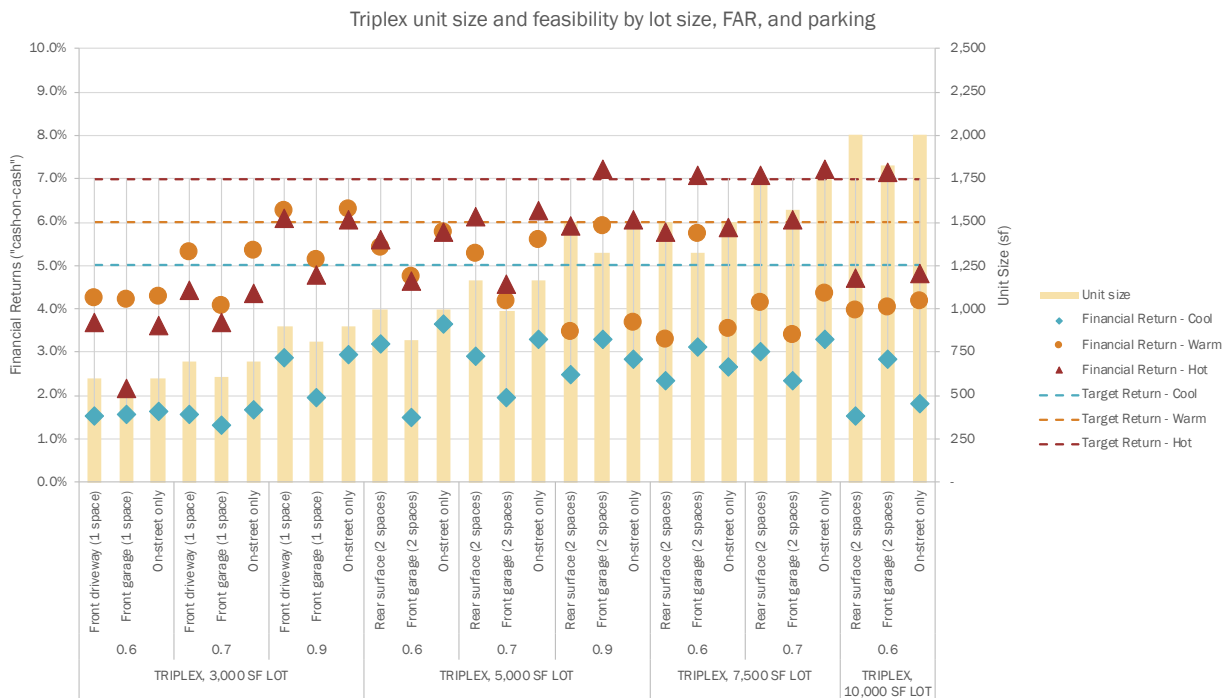
feasibility challenges, not to provide a precise calculation of the feasibility of a specific situation.

Exhibit 1: Fourplex Results Summary by Lot Size, FAR, and Parking



Source: ECONorthwest

Exhibit 2: Triplex Results Summary by Lot Size, FAR, and Parking



Source: ECONorthwest

Part 2: Impact of Minimum Lot Size Relative to Single Family Minimum

In Part 2 of our analysis, we compared the 5,000, 7,500, and 10,000 square foot lot sizes with an assumed minimum lot size of 5,000 square feet for single-family detached housing (1, 1.5, and 2 times the minimum lot size for single-family detached, respectively). The purpose of this analysis was to see how the requirement for larger lots than required for single-family detached impact feasibility. (See discussion on page 4 for more on how we addressed land costs in this analysis.)

Key Findings: Impacts of Increased Land Cost

For lot sizes more than 1 times the single-family detached lot size but less than 2 times that lot size, the land cost increase is probably non-linear. The main issue in an infill situation would be a reduced supply of lots (see discussion on page 12). If it is not possible to build 2 houses on a lot, triplex or fourplex development is still competing against the returns of 1 single-family home. This is less clear in a greenfield situation where the increase in land cost might be more linear. As noted on page 4, if the lot size for a triplex or fourplex is 2, 3, or 4 times the lot size for a single-family home, the land cost will increase by a roughly corresponding amount.

Our analysis shows that **increased land cost** (50% to 100% above the cost of 1 single-family lot for a lot larger than the minimum for single family) **has a pronounced negative impact on feasibility, particularly in hot and warm markets where land costs are higher**. (See Exhibit 3 and Exhibit 4 on page 11.) A higher FAR helps mitigate this to some degree but it is generally not enough to overcome the increase in land costs. While we did not test lot sizes 3 to 4 times the minimum for single-family detached homes, we anticipate that those would show an even more pronounced impact on feasibility because of the corresponding increase in land costs.

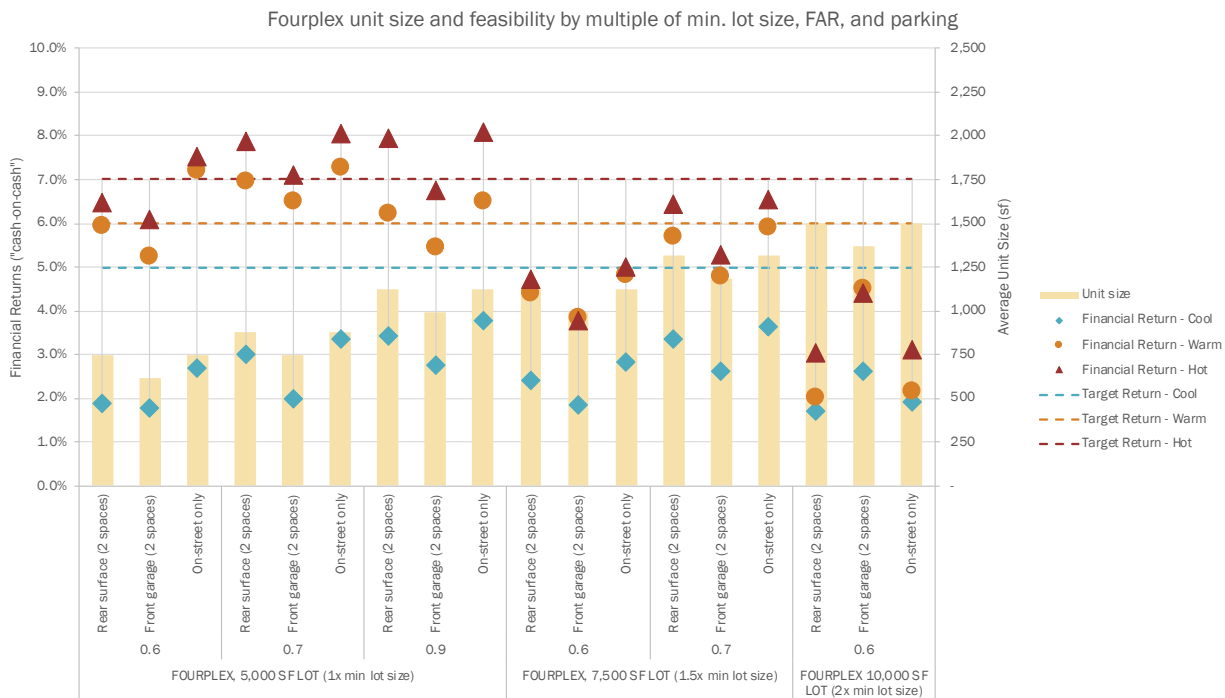
Feasibility Results by Regulatory Scenario

Exhibits 3 and 4 on the following page show the following for each regulatory scenario, like Exhibits 1 and 2:

- Maximum average unit size possible (pale yellow bars).
- Estimated financial returns for each set of market conditions (blue diamonds for cool markets, orange circles for warm markets, and red triangles for hot markets).
- Target financial returns for each set of market conditions (blue dashed line for cool markets, orange dashed line for warm markets, and red dashed line for hot markets).

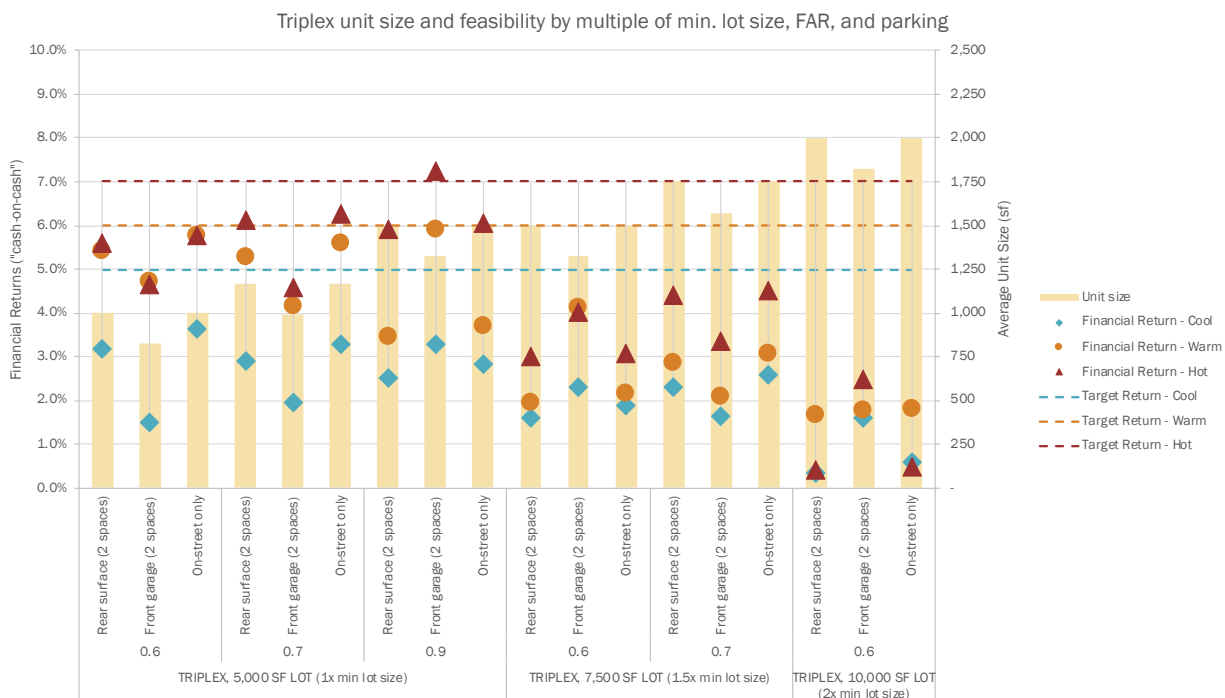
Where the estimated returns exceed the target returns for that market (shown as the marker being above the dashed line of same color), this indicates a greater likelihood of financial feasibility for that development. As noted previously, **this analysis is intended to provide a rough indication of feasibility challenges, not to provide a precise calculation of the feasibility of a specific situation**, given that the financial inputs are illustrative rather than precisely calibrated for any given location.

Exhibit 3: Fourplex Results Summary by Multiple of Minimum Lot Size



Source: ECONorthwest

Exhibit 4: Triplex Results Summary by Multiple of Minimum Lot Size



Source: ECONorthwest

Key Findings: Reduced Land Availability

To estimate how much minimum lot sizes greater than those for single-family homes might affect the availability of lots for development in an infill situation, we used readily available data from two example areas zoned for single-family homes to measure the prevalence of lots at various multiples of the minimum size for single-family homes in that zone. The two sample areas we tested illustrate opposite ends of a spectrum:

- The Eugene R-1 zone allows 14 dwelling units per net acre, which translates to a minimum of just over 3,000 square feet per single family home (though it is not described as a minimum lot size). The sample area was platted under different zoning rules; many lots are larger than the minimum allowed by the current R-1 zoning.
- The Redmond R-1 zone has a minimum lot size of 9,000 square feet, and there are relatively few larger lots in the sample area.

As shown in Exhibit 5, more than 90% of the lots in the Eugene sample area are more than twice the minimum area required for a single-family home, but less than a quarter are more than 4 times the minimum required for a single-family home. In Redmond, less than half of the lots in the sample area were even 1.25 times the minimum lot size for single-family homes, and only 2% were 4 times the minimum lot size.

Exhibit 5: Prevalence of Lots by Multiple of Minimum Lot Size

Multiple of Min. Lot Size for Single-Family Homes	Eugene R-1	Sample Area		Redmond R-1	Sample Area	
	Lot Size (sf)	# of Lots	% of Lots in Sample	Lot Size (sf)	# of Lots	% of Lots in Sample
1	3,111	972	100%	9,000	858	100%
1.25	3,889	970	100%	11,250	349	41%
1.5	4,667	956	98%	13,500	176	21%
2	6,223	902	93%	18,000	69	8%
3	9,334	504	52%	27,000	25	3%
4	12,446	212	22%	36,000	17	2%

Source: ECONorthwest analysis based on parcel and zoning data provided by the cities of Eugene and Redmond for prior (recent) projects.

This shows that **requiring lot sizes up to 2 times the minimum for single-family homes may not be a major issue from a land supply perspective in all communities, but it will be an issue in some communities. Requiring lot sizes that are 3 to 4 times the minimum for single-family detached homes will be a land supply issue for infill development in many communities.**

Conclusions

In summary, if the goal is to maximize or ensure feasibility for triplex and fourplex development to the extent possible, we recommend the following options:

- Scale FAR to minimum lot size, so that smaller lots are allowed higher FAR. This will ensure a reasonable average unit size even on small lots.
- Set the minimum lot size for triplexes and fourplexes the same as for single-family detached homes in the zone. Requiring larger lots increases costs, decreases feasibility, and reduces the supply of lots where triplex and fourplex development is allowed.
- Do not require more than 1 parking space per development in zones with a minimum lot size under 5,000 sq. ft., as fitting the parking on site reduces the buildable area for housing and may not allow a reasonable average unit size.

Any changes to regulations that decrease efficiency of land relative to the scenarios evaluated in this analysis would have detrimental impacts to project viability for triplexes and fourplexes.



MEMORANDUM

Large & Metro Cities Model Code Parts 1 – 3 (REVISED DRAFT) DLCD Middle Housing Model Code

DATE June 18, 2020
TO MHMC Model Code Technical Advisory Committee (MCTAC)
FROM Matt Hastie, Cathy Corliss, and Kate Rogers, Angelo Planning Group
CC Ethan Stuckmayer and Robert Mansolillo, DLCD
Project Team

Commentary:

This memorandum combines Parts 1, 2, and 3 of the draft Large & Metro Cities Model Code (LMCMC):

- **Chapter 1. Combined Standards for All Middle Housing (Part 1).** This chapter includes the Purpose, Applicability, Definitions, and Relationship to Other Regulations sections, which are proposed to be shared by all middle housing types. The draft code provisions have been revised following review at Model Code Technical Advisory Committee (MCTAC) meetings 4 and 5 and Rulemaking Advisory Committee (RAC) meetings 5 and 6.
- **Chapter 2. Duplexes (Part 2).** This chapter includes proposed standards for duplexes and is the same as the draft Medium Cities Model Code.
- **Chapter 3. Triplexes and Quadplexes (Part 2).** This chapter includes proposed standards for triplexes and quadplexes. The draft code provisions have been revised following review at MCTAC 5 and 6 and RAC 6 and 7.
- **Chapter 4. Townhouses (Part 3).** This chapter includes proposed standards for townhouses. The draft code provisions have been revised following review at MCTAC 5 and 6 and RAC 6 and 7.

A separate memo discussing initial ideas for cottage clusters is included in the MCTAC 7 packet. Draft model code provisions for cottage clusters will be incorporated into the next version of the draft LMCMC.

The tables in Chapters 1 – 4 include provisions organized into two columns (plus commentary for the MCTAC):

1. **Model Code** – The standards that will apply directly to proposals for middle housing development if jurisdictions do not adopt the required code amendments. These standards are consistent with the requirements and intent of HB 2001 and are intended to be straightforward and implementable by Large Cities (as defined in the house bill) throughout the state.
2. **Minimum Compliance** – The minimum standards that development codes must meet in order to comply with the text and intent of HB 2001. These are the standards against which DLCD will compare amended development codes to ensure they comply with state law.

Ultimately, the LMCMC minimum compliance standards will be adopted **directly** into administrative rules, and the model code will be adopted **by reference** into administrative rules.

***Note:** Revisions to the draft LMCMC that were made since the last MCTAC meeting appear in “track changes” mode. For ease of review, track changes mode is not used where commentary has been added or updated.*

Chapter 1. Combined Standards for All Middle Housing

- Sections:
- A. Purpose
 - B. Definitions
 - C. Applicability
 - D. Relationship to Other Regulations

Standard	Model Code	Minimum Compliance	Commentary
A. Purpose	The purpose of this model middle housing code (“code”) is to implement HB 2001, codified in ORS 197.758 et seq, by providing siting and design standards for middle housing developed in areas zoned for residential use that allow for the development of detached single family dwellings.	Local governments are not required to include a purpose statement specific to provisions needed to implement and comply with HB 2001.	
B. Definitions	The following definitions shall apply for the purposes of this code, notwithstanding other definitions in the development code:	--	--
1. “Common wall”	“Common wall” means a wall or set of walls in a single structure shared by two or more dwelling units. The common wall must be shared for at least 25 percent of the length of the side of the building of the dwelling units. The common wall may be any wall of the building, including the walls of attached garages.	No requirement, as long as definitions ensure consistent application of middle housing standards.	<i>HB 2001’s definition of “townhouse” uses the term “common wall;” therefore, it is defined here. The proposed definition is consistent with those used by the Cities of Bend and Portland (and possibly others). If needed, additional language can be added to refer to Oregon Building code requirements for walls between housing units on separate lots or within separately owned components of the same structure.</i>
2. ~~“Constrained lands”~~ <u>Goal Protected Lands</u>	~~“Constrained lands”~~ <u>Goal Protected Lands</u> means lands protected or designated pursuant to the following statewide planning goals: - Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces; - Goal 7 Areas Subject to Natural Hazards; - Goal 15 Willamette River Greenway; - Goal 16 Estuarine Resources; - Goal 17 Coastal Shorelands; - Goal 18 Beaches and Dunes.	<i>For the purposes of determining areas in which triplexes, quadplexes, townhouses, and cottage clusters must be allowed, local governments may exclude “Goal Protected Lands”. No requirements for this definition. Jurisdictions may allow middle housing on constrained lands to the extent they determine to be appropriate and consistent with statewide goal protection requirements.</i>	<i>Update since MCTAC 6: This term has been renamed as “Goal Protected Lands” and the minimum compliance standard has been updated. This definition is proposed to establish areas where middle housing (besides duplexes) is <u>not</u> permitted by the model code.</i>
3. “Cottage cluster”	“Cottage cluster” means a grouping of no fewer than four detached dwelling units per acre, each with a footprint of less than 900 square feet, located on a single lot or parcel that includes a common courtyard.	<i>Same as model code, with the exception that the individual units could be located on separate lots. Local governments must have a definition for cottage clusters that allows groupings of smaller detached units with a shared courtyard or open space. The definition must limit the footprint of each detached dwelling unit to less than</i>	<i>Update since MCTAC 6: The minimum compliance column has been fleshed out, but may need further refining following discussion of cottage clusters with the MCTAC. HB 2001 provides the definition of “cottage cluster,” but the draft model code narrows the definition to mean detached units <u>on a single lot</u>. Some jurisdictions provide for cottage clusters on individual lots; however, this</i>

Standard	Model Code	Minimum Compliance	Commentary
		<i>900 SF. The definition may provide greater flexibility than the model code, including allowing individual units on separate lots.</i> <i>(See additional information in commentary.)</i>	<i>would be excessively complicated for the model code, as it requires land division, cross-access agreements, and other provisions that make a clear and objective review path that could work in any jurisdiction very challenging.</i> <i>However, for minimum compliance with HB 2001, jurisdictions may provide greater flexibility as long as the minimum standards are met.</i>
4. “Detached single family dwelling”	“Detached single family dwelling” means a detached structure on a lot or parcel that is comprised of a single dwelling unit. Detached single family dwellings may be constructed off-site, e.g., manufactured dwellings or modular homes.	No requirement, as long as definitions ensure consistent application of middle housing standards.	
5. “Duplex”	“Duplex” means <u>two dwelling units on a lot or parcel in any configuration</u> . ~~a detached structure on a lot or parcel that is comprised of two dwelling units.~~ In instances where a <u>structure development</u> 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~~ <u>development</u> is considered a duplex or a primary dwelling unit with an ~~attached or internal~~ ADU.	“Duplex” means two attached dwelling units on one lot or parcel. A large city may define a duplex to include two detached dwelling units on one lot or parcel.	Update since MCTAC 6: <i>The duplex definition has been revised to allow detached units in addition to attached. DLCD initiated this change as a result of testimony heard from TAC, RAC, and members of the public. This revision will also be made to the Medium Cities Model Code.</i>
6. “Floor area”	“Floor area” means the total area of all floors of a building. Floor area is measured for each floor from the exterior faces of a building or structure. Floor area includes stairwells, ramps, shafts, chases, and the area devoted to garages and structured parking. Floor area does not include the following: • Areas where the elevation of the floor is 4 feet or more below the adjacent right-of way; • Roof area, including roof top parking; • Roof top mechanical equipment; and • Roofed porches, exterior balconies, or other similar areas, unless they are enclosed by walls that are more than 42 inches in height for 75 percent or more of their perimeter	<i>If the jurisdiction has a definition of floor area, they may use that definition in regulating middle housing. If a jurisdiction does not already have a definition of floor area, the definition must be the same as or similar to the model code.</i>	<i>The definition of floor area clarifies which parts of a building are included in the FAR calculation. The proposed definition is from the City of Portland; we suggest this definition because it is very specific, thereby avoiding confusion to the extent possible, and <u>includes garages</u> in the floor area definition. Because garages can occupy a significant amount of space, we recommend including them in the FAR calculation in order to control a building’s overall scale. Additionally, a sampling of Large Cities’ development codes revealed that it is more common to include garages in the floor area definition than to exclude them.</i>
7. “Floor area ratio (FAR)”	“Floor area ratio (FAR)” means the amount of floor area of a building or structure in relation to the amount of site area, expressed in square feet. For example, a floor area ratio of 2 to 1 means two square feet of floor area for every one square foot of site area.	<i>If the jurisdiction applies FAR standards to middle housing, a definition is required. The definition should be similar to the model code, but the jurisdiction could allow portions of the site to be excluded from the calculation (e.g., public utility easements).</i>	Update since MCTAC 6: <i>It was suggested that the OAR include a calculation method for FAR. This may be added in a subsequent draft.</i>

Standard	Model Code	Minimum Compliance	Commentary
8. “Infrastructure- <u>constrained lands</u> ~~deficient areas~~ ”	“Infrastructure- ~~constrained lands~~ <u>deficient areas</u> ” means <u>lots or parcels that are not currently served by areas where the local government has identified</u> water, sewer, storm drainage, or transportation services <u>and which cannot be remedied by future development of middle housing on the subject lot or parcel.</u> ~~that are either significantly deficient or are expected to be significantly deficient before December 31, 2023, but for which the local government has demonstrated that it is not possible to develop a plan and secure necessary financing and/or needed jurisdictional consent for the necessary improvements as contemplated for the infrastructure-based time extension request (IBTER) process. In the case of transportation system constraints, degraded mobility standards (level of service, etc.) do not qualify an area as “infrastructure-deficient.”~~	~~No requirement for this definition. Pursuant to Section 4 of HB 2001, DLCD will define Infrastructure-deficient areas for the purposes of a city seeking an extension of middle housing provision in infrastructure-deficient areas. For the purposes of determining areas in which triplexes, quadplexes, townhomes, and cottage clusters must be allowed, local governments may exclude “infrastructure constrained lands”.~~	Update since MCTAC 6: This term has been renamed as “Infrastructure-constrained lands” to differentiate these areas from “infrastructure-deficient areas,” which are part of the infrastructure-based time extension request (IBTER) process. The definition has also been simplified to mean lands with infrastructure constraints that cannot be remediated by future development of middle housing. This definition is proposed to establish another type of area where middle housing (besides duplexes) is <u>not</u> permitted by the model code. The proposed Applicability statement would exempt these infrastructure-constrained lands from the requirement to allow middle housing (other than duplexes), as stated in Section C.
9. “Lot or parcel”	“Lot or parcel” means any legally created unit of land.	~~Same as model code.~~ Local governments must have a definition for lot and/or parcel that is the same as, or similar to, the model code definition.	Update since MCTAC 6: The minimum compliance standard has been clarified.
10. “Middle housing”	“Middle housing” means duplexes, triplexes, quadplexes, cottage clusters, and townhouses.	~~Same as model code.~~ The OAR will use the same definition as the model code. Local governments are not required to have a definition for middle housing as long as each of housing types included in the OAR definition is defined.	Update since MCTAC 6: The minimum compliance standard has been clarified. HB 2001 provides the definition of “middle housing.”
11. “Quadplex”	PREFERRED OPTION (2): “Quadplex” means four dwelling units on a lot or parcel in any configuration.	Jurisdictions must define “quadplex” as four dwelling units on a lot. Jurisdictions must allow quadplexes to be provided in an attached configuration but may allow detached units as well.	The MCTAC expressed the most support for the definition option that allows both attached and detached triplexes and quadplexes, because of the additional flexibility it affords.
12. “Townhouse”	“Townhouse” means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit. A townhouse is also commonly called a “rowhouse,” “attached house,” or “common-wall house.”	Jurisdictions must have a definition of “townhouse” (or one of the alternative terms, such as rowhouse), that is the same as or similar to the model code definition. At minimum, this housing type must be defined as attached dwelling units on individual lots.	HB 2001 provides the definition of “townhouse.”
13. “Triplex”	PREFERRED OPTION (2): “Triplex” means three dwelling units on a lot or parcel in any configuration.	Jurisdictions must define “triplex” as three dwelling units on a lot. Jurisdictions must allow triplexes to be provided in an attached configuration but may allow detached units as well.	See commentary for “quadplex” above.
14. “Townhouse project”	“Townhouse project” means one or more townhouse structures constructed, or proposed to be constructed, together with the development site where the land has been divided, or is proposed to	Local governments may, but are not required to, have a definition for townhouse project.	This definition describes an overall townhouse development, as opposed to individual townhouse units. Some development standards in Chapter 4 apply to the townhouse project overall, whereas others apply to individual units or lots.

Standard	Model Code	Minimum Compliance	Commentary
	be divided, to reflect the townhouse property lines and the commonly owned property, if any.		
15. “Zoned for residential use”	“Zoned for residential use” means a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan map designation.	~~Same as model code.~~ <u>The OAR will use the same definition as the model code. Local governments are not required to have a definition as long as they comply with OAR requirements to allow middle housing within areas zoned for residential use.</u>	Update since MCTAC 6: The minimum compliance standard has been clarified. This definition clarifies that the middle housing requirement only applies in residential zones. This is further clarified in the Applicability section.
C. Applicability	--	--	--
1. <u>Applicability of Code Sections.</u>	a. Code sections applicable to all middle housing types are: Chapter 1, Sections A. Purpose, B. Definitions, C. Applicability, and D. Relationship to Other Regulations. <i>[and potentially others]</i> b. Code standards applicable to specific housing types are listed below: - Duplexes: <i>Chapter 2.</i> - Triplexes: <i>Chapter 3.</i> - Quadplexes: <i>Chapter 3.</i> - Cottage clusters: <i>[list sections here].</i> - Townhouses: <i>Chapter 4.</i>	N/A	<i>This subsection of Applicability states which sections of the model code are applicable to each type of housing.</i>
2. <u>Applicability by Development Type and Location.</u>	a. Except as specified in subsection (b) of this section (C)(2), the standards in this code allow for the following development on lots or parcels zoned for residential use that allow for the development of detached single family dwellings: - New duplexes and those created through conversion of existing detached single family dwellings. - New triplexes, quadplexes, cottage clusters, and townhouses, and those created through conversion of existing detached single family dwellings or duplexes. b. <u>Exceptions.</u> The standards in this code do not allow the following, unless otherwise permitted by the development code through clear and objective standards, criteria, and procedures: - On ~~constrained goal-protected or infrastructure-constrained lands or within infrastructure-deficient areas~~, the creation of triplexes, quadplexes, cottage clusters, or townhouses, or the creation of more than two dwelling units on a single lot or parcel, including accessory dwelling units.	Duplex – ~~The standards of the code must allow for the development of new duplexes and those created through conversion of existing detached single-family dwelling on lots and parcels zoned for residential use that allow for the development of detached single family dwellings.~~<u>same as model code.</u> Other Housing Types – As with the model code, <u>the standards of the code must allow for the development of new triplexes, quadplexes, cottage clusters, and townhouses, and those created through conversion of existing detached single family dwellings or duplexes on lots and parcels zoned for residential use that allow for the development of detached single family dwellings.</u> ~~Local governments may use additional other criteria to regulate where middle housing (other than duplexes) is allowed including but not limited to within areas zoned for residential use on goal-protected constrained lands or and infrastructure-constrained lands.~~<u>deficient areas.</u>	Update since MCTAC 6: The model code has been updated to reflect the new terminology for “goal protected” and “infrastructure-constrained” lands. The minimum compliance standards have also been fleshed out. This subsection establishes the following: - Identifies <u>where</u> within “areas zoned for residential use” middle housing must be allowed. - Clarifies that the provisions only apply in residential zones in which detached single family dwellings are permitted. - Per HB 2001, duplexes must be allowed on all residential lots and parcels that allow SFD. - The proposed language for other middle housing types indicates that they are not required to be allowed within goal protected or infrastructure-constrained lands “<u>unless otherwise permitted by the jurisdiction through clear and objective standards, criteria, and procedures.</u>” This gives local jurisdictions the ability to identify conditions where they would be allowed in these areas, as opposed to a blanket prohibition.

Standard	Model Code	Minimum Compliance	Commentary
	On lands that are not zoned for residential use, the creation of middle housing. This includes lands zoned primarily for commercial, industrial, agricultural, public, or mixed uses, even if those zones allow for the development of detached single family dwellings.		- Indicates that the standards apply to new construction as well as conversions of single family detached homes. - For lots or parcels within goal protected or infrastructure-constrained lands, which only allow a duplex, the model code does not allow for creation of more than two units, including ADUs (i.e., an SFD with an ADU cannot be converted into a duplex unless the jurisdiction allows it). This is consistent with the MCMC.
D. Relationship to Other Regulations	--	--	--
1. Conflicts.	In the event of a conflict between this code and other standards applicable to a middle housing development, the standards of this code control.	~~Same as model code.~~ No specific requirement, as long as local governments address conflicts in the development code.	Update since MCTAC 6: The minimum compliance standard has been clarified. Proposed language is the same as the draft Medium Cities Model Code, except it refers to all middle housing.
2. Public Works Standards.	Clear and objective exceptions to public works standards granted to single family dwellings shall also be granted to duplexes.	Duplex – If a local government or other utility service provider grants clear and objective exceptions to public works standards to single family detached development, those same exceptions must also be granted to duplexes permitted under this section. (draft OAR 660-046-0105.7 for Med Cities) Other Housing Types – N/A	For public works standards, it is appropriate to grant the same exceptions to duplexes that apply to single family dwellings, because duplexes must be allowed on any lot or parcel that allows a detached single family dwelling. However, it may not be appropriate to grant the same exceptions to other middle housing types, which need not be permitted on any single family lot or parcel, and which represent higher-intensity development.
3. Protective Measures.	Middle housing shall comply with protective measures (plans, policies, or regulations) adopted pursuant to statewide land use planning goals (e.g., environmental and natural hazard protections).	~~Same as model code.~~ Local governments may regulate Middle Housing to comply with protective measures (including plans, policies, and regulations) adopted and acknowledged pursuant to statewide land use planning goals.	Update since MCTAC 6: The minimum compliance standard has been clarified. This clarifies that requirements of HB 2001 do not override local protections for natural resources, natural hazards, or other regulatory protections adopted pursuant to Statewide Land Use Planning Goals. This could mean, for example, limiting building footprints in wetland areas, ensuring middle housing types are reviewed for historic compatibility in historic districts, or limiting building heights within the Willamette Greenway.

Chapter 2. Duplexes

Sections:

- A. Permitted Uses and Approval Process
- B. Development Standards
- C. Design Standards
- D. Duplex Conversions

Standard	Model Code	Minimum Compliance
A. Permitted Uses and Approval Process	Duplexes are permitted outright on lots or parcels zoned for residential use that allow for the development of detached single family dwellings. Duplexes are subject to the same approval process as that for detached single family dwellings in the same zone and are subject only to clear and objective standards, approval criteria, conditions, and procedures. Alternatively, an applicant may choose to submit an application for a duplex subject to discretionary standards and criteria adopted in accordance with ORS 197.307, if such a process is available.	Local governments must permit duplexes outright on each lot or parcel zoned for residential use that allows for the development of detached single family structures. Local governments must apply the same approval process to duplexes as detached single family dwellings in the same zone. Local governments may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of duplexes pursuant to OAR 660-008-0015. <i>(draft OAR 660-046-0104 for Med Cities)</i>
B. Development Standards	Except as specified below, duplexes shall meet all clear and objective development standards that apply to detached single family dwellings in the same zone (including, but not limited to, minimum and maximum lot size, minimum and maximum setbacks, and building height), unless those standards conflict with this code. The following development standards are invalid and do not apply to duplexes being developed on lots or parcels zoned for residential use that allow the development of a detached single family dwelling:	--
1. <u>Maximum Density.</u>	The jurisdiction’s pre-existing density maximums and minimum lot sizes for duplexes do not apply.	For the purposes of calculating density, if a local government applies density maximums in a zone, it may not apply those maximums to the development of duplexes. <i>(draft OAR 660-046-0105.2.a for Med Cities)</i>
2. <u>Setbacks.</u>	A minimum front setback of greater than 20 feet or a minimum rear setback of greater than 15 feet except for those minimum setbacks applicable to garages and carports.	A local government may not require setbacks to be greater than those applicable to detached single family structures in the same zone. <i>(draft OAR 660-046-0105.3.a for Med Cities)</i>
3. <u>Off-street Parking.</u>	Any off-street parking requirement.	A local government may not require more than a total of two (2) off-street parking spaces. <i>(draft OAR 660-046-0105.5.a for Med Cities)</i>
C. Design Standards	New duplexes shall meet all clear and objective design standards (e.g., entry orientation, window coverage, articulation, etc.) that apply to detached single family dwellings in the same zone, unless those standards conflict with this code. Any design standards that apply only to duplexes are invalid.	Update since MCTAC 6: <i>Because the duplex definition has been revised to allow detached units, the model code may need to address the applicability of a jurisdiction’s single family design standards. For example, the code may need to specify whether single family window coverage standards would apply to one or both detached units. This will be addressed in a subsequent draft as needed.</i> Local governments are not required to apply design standards to new duplexes. However, if the local government chooses to apply design standards to new duplexes, it may only apply all clear and objective design standards that the local government applies to detached single family structures in the same zone. A local government may not apply design standards to duplexes created through internal conversion of a single family detached structure. <i>(draft OAR 660-046-0106 for Med Cities)</i>

Standard	Model Code	Minimum Compliance
D. Duplex Conversions	Conversion of an existing detached single family structure to a duplex is allowed, pursuant to Chapter 1, Section C (Applicability), provided that the conversion does not increase nonconformance with applicable clear and objective standards.	~~Identical to~~ ~~Same as~~ model code <u>language</u> .

Chapter 3. Triplexes and Quadplexes

- Sections:
- A. Permitted Uses and Approval Process
 - B. Development Standards
 - C. Design Standards
 - D. Triplex and Quadplex Conversions

Standard	Model Code	Minimum Compliance
A. Permitted Uses and Approval Process	<i>Commentary: Proposed language is the same as the draft Medium Cities Model Code, except with references to triplexes and quadplexes.</i> Triplexes and quadplexes are permitted outright wherever they are allowed as provided in Chapter 1, Section C (Applicability). Triplexes and quadplexes are subject to the same approval process as that for detached single family dwellings in the same zone and are subject only to clear and objective standards, approval criteria, conditions, and procedures. Alternatively, an applicant may choose to submit an application for a triplex or quadplex subject to discretionary standards and criteria adopted in accordance with ORS 197.307, if such a process is available.	<i>Update since MCTAC 6: This standard has been updated to be more consistent with the draft OAR for medium cities. Further refinement may be needed.</i> ~~Same as model code:~~ Local governments must permit triplexes and quadplexes outright in areas zoned for residential use that allow for the development of detached single family structures. Local governments must apply the same approval process to triplexes and quadplexes as detached single family dwellings in the same zone. Local governments may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of triplexes and quadplexes pursuant to OAR 660-008-0015.
B. Development Standards 1. <u>Applicability</u> .	<i>Commentary: Similar to the Medium Cities Model Code, we propose subjecting triplexes and quadplexes to all clear and objective standards that apply to single family dwellings, unless the model code provides different standards.</i> a. Triplexes and quadplexes shall meet: - The standards in subsections (2) through (9) of this section (B). - All other clear and objective development standards that apply to detached single family dwellings in the same zone, unless those standards conflict with this code and except as specified in subsection (1)(b) of this section (B). b. The following standards are invalid and do not apply to triplexes or quadplexes allowed by this code: - Maximum lot coverage or minimum landscape area standards.	Local governments are not required to have an applicability statement.

	The jurisdiction’s development standards that apply only to triplexes, quadplexes, or multifamily development.	
2. <u>Number of Units.</u>	Commentary: <i>This provision is intended to clarify that the model code does not allow the creation or conversion of a quadplex from a single family house that has an existing ADU (thus creating more than four units on a lot). However, conversion of a house with an ADU into a triplex (thus creating four units on a lot) would be allowed. With detached units allowed, there would be no operational difference between a quadplex and a triplex with an ADU, so the model code should not prohibit that.</i> This code does not allow for the creation of more than four (4) dwelling units on a lot, including accessory dwelling units.	Local governments may allow more than four units on a lot, if they so choose.
3. <u>Minimum Lot Size.</u>	<p>Update since MCTAC 6: <i>Based on comments from the MCTAC and analysis by ECONorthwest and SERA Architects, the project team revised its recommendation so that the minimum lot size for a triplex/quadplex is the same as for a detached single family dwelling in the same zone, regardless of building size. (This was Option 1 in the MCTAC 5 draft.) ECONorthwest’s financial analysis concluded that requiring larger lots increases costs, decreases feasibility, and reduces the supply of lots where triplex and quadplex development is allowed.</i></p> <p>RECOMMENDED OPTION (1): <u>The minimum lot size for a triplex or quadplex is the same as the minimum lot size for a detached single family dwelling in the same zone.</u></p> <p>PREFERRED OPTION (4): <u>The minimum lot size is based on the gross floor area (GFA) of the triplex or quadplex as specified in subsections (3)(a) and (b) of this section (B). Internal conversions are exempt from the standards in subsection (3)(b).</u></p> <p class="list-item-l1"><u>a. If the GFA is no larger than 2,800 sf, the minimum lot size is the same as the minimum lot size for a detached single family dwelling in the same zone;</u></p> <p class="list-item-l1"><u>b. If the GFA is over 2,800 sf, the minimum lot size is calculated as a percentage of the minimum lot size for a detached single family dwelling in the same zone as follows:</u></p> <u>▪ Triplex: [125 / 150] percent; and</u> <u>▪ Quadplex: [150 / 200] percent.</u>	Update since MCTAC 6: <i>Based on results of the feasibility analysis, minimum compliance has been updated to prevent jurisdictions from requiring larger minimum lot sizes for triplexes or quadplexes than for detached single family dwellings.</i> <u>The minimum lot size must be no less than the minimum lot size for a single family dwelling in the same zone, and must not exceed XX square feet.</u> <u>The minimum lot size must not exceed the minimum lot size for a detached single family dwelling in the same zone.</u>
4. <u>Minimum Lot Width.</u>	Commentary: <i>The project team recommends deferring to the jurisdiction’s standards for detached single family dwellings.</i> RECOMMENDED OPTION (1): The minimum lot width for a triplex or quadplex is the same as the minimum lot width for a detached single family dwelling in the same zone.	A minimum lot width standard is not required. However, if a jurisdiction applies a minimum lot width standard to tri/quad development it may not be wider than the standard for a single-family detached dwelling in the same zone.
5. <u>Maximum Density.</u>	Commentary: <i>This issue has been a key topic of discussion amongst the RAC and project team, and some RAC/MCTAC members have expressed concerns about allowing four times the density in single-family zones. Additional input from the MCTAC is welcome.</i>	~~Same as model code.~~ <u>For the purposes of calculating density, if a local government applies density maximums in a zone, it may not apply those maximums to the development of triplexes or quadplexes. (consistent with draft OAR 660-046-0120.2 for Med Cities)</u>

	The maximum density for triplexes and quadplexes shall be determined by the minimum lot size as provided in subsection (3) of this section (B). The jurisdiction’s pre-existing density maximums do not apply.					
6. <u>Setbacks.</u>	Triplexes and quadplexes shall be subject to the same minimum and maximum setback standards that are applicable to detached single family dwellings in the same zone. Minimum front setbacks greater than 20 feet and minimum rear setbacks greater than 15 feet are invalid, except for those minimum setbacks applicable to garages and carports.	A local government may not require setbacks to be greater than those applicable to detached single family structures in the same zone. <i>(draft OAR 660-046-0105.3.a for Med Cities)</i>				
7. <u>Height.</u>	Update since MCTAC 6: <i>A cap on a jurisdiction’s applicable height maximum has been added, so that at least two stories are allowed (consistent with the draft standards for townhouses). A definition for “story” and/or calculation method for building height may be needed. —</i> <i>(See general statement under Section B.)</i> <u>Triplexes and quadplexes are subject to the same maximum height as applicable to detached single family dwellings in the same zone, except a maximum height of less than 25 feet or two stories is invalid.</u>	Triplexes and quadplexes may not be subject to lower maximum height standards than those applicable to detached single family structures in the same zone, <u>except a maximum height of less than 25 feet or two stories is invalid.-</u>				
8. OPTIONS FOR REGULATING SCALE / BULK:						
<i>Based on input from the MCTAC, the project team recommends using Maximum Floor Area Ratio (FAR) to regulate the scale or bulk of triplexes and quadplexes. FAR is a ratio of the floor area in the structure to the square footage of the site. A maximum FAR standard works by limiting the size of a building (or buildings) in proportion with the size of the lot. A primary advantage of FAR is that it balances compatibility and flexibility. FAR ensures relatively consistent size of buildings but provides flexibility in how floor area is distributed across the site and across multiple units.</i> <i>Bulk generally refers to the relative size, volume, or massing of a building. Scale generally refers to how people perceive the size of a building compared to other buildings or forms. Bulk and scale are often regulated to avoid stark contrasts between adjacent buildings or all buildings in a neighborhood or district. Regulating building scale or bulk may be appropriate because triplexes and quadplexes are more likely to maximize the buildable envelope on the site, which may not be compatible with single family neighborhoods.</i>		Commentary: <i>Minimum compliance standards should allow, but not require, local governments to regulate scale or bulk using provisions such as floor area ratio, lot coverage, or unit size. DLCD is still developing OAR language that will limit the allowable bulk/scale controls so they do not cause unreasonable cost or delay.</i>				
RECOMMENDED OPTION (2): Maximum Floor Area Ratio (FAR)	Update since MCTAC 6: <i>Based on comments from the MCTAC and analysis by ECONorthwest and SERA Architects, the project team recommends Option 2b, which scales the allowable FAR based on the minimum lot size in the zone. ECONorthwest’s financial analysis supports this recommendation because it ensures a reasonable average unit size even on small lots.</i> <i>We also recommend tweaking the scale slightly. This would have the effect of allowing higher FAR in some zones. The revised scale would allow:</i> <i>0.9 FAR in zones with a 3,000 sf minimum lot size (3,000 sf is a common standard)</i> <i>0.7 FAR in zones with a 5,000 sf minimum lot size (5,000 sf is also common).</i> <i>We also included an alternative set of FAR figures, which would allow even higher FAR, similar to those recommended by Elizabeth Decker and others. We welcome MCTAC input on these options.</i> ~~OPTION 2a: The maximum floor area ratio for all buildings onsite, cumulatively, is 0.6 to 1.~~ RECOMMENDED OPTION (2b): The maximum floor area ratio for all buildings onsite, cumulatively, is based on the minimum lot size for a detached single family dwelling in the same zone, as provided below: <table><tr><th>Minimum Lot Size in Zone</th><th>Maximum FAR</th></tr><tr><td>~~Less than 3,000 sf~~ <u>or less</u></td><td>0.9 to 1 <u>Alt: 1.4 to 1</u></td></tr></table>	Minimum Lot Size in Zone	Maximum FAR	~~Less than 3,000 sf~~ <u>or less</u>	0.9 to 1 <u>Alt: 1.4 to 1</u>	See general commentary above.
Minimum Lot Size in Zone	Maximum FAR					
~~Less than 3,000 sf~~ <u>or less</u>	0.9 to 1 <u>Alt: 1.4 to 1</u>					

	More than 3,000 sf ~~or more but less than, up to and including~~ 5,000 sf More than 5,000 sf ~~or more~~ but less than 20,000 sf Alt: 5,000 – 10,000 sf Alt: 10,000 sf 20,000 sf or more 0.7 to 1 Alt: 1.1 to 1 0.6 to 1 Alt: 0.9 to 1 Alt: 0.5 to 1 0.4 to 1	
9. <u>Off-street Parking.</u>	<i>Update since MCTAC 6: We added a fourth option based on the results of the feasibility analysis by ECONorthwest and SERA Architects. The recommendation resulting from that analysis was that more than 1 parking space per development should not be required in zones with a minimum lot size under 5,000 sq. ft., as fitting the parking on site reduces the buildable area for housing and may not allow a reasonable average unit size. We also eliminated Option 3 but retained Options 1 and 2 for further consideration by the MCTAC.</i> • OPTION 1: No off-street parking is required for a triplex or quadplex. • OPTION 2: a. <u>Required Off-street Parking.</u> The minimum number of required off-street parking spaces is: i. For a triplex, one (1) space; ii. For a quadplex, two (2) spaces. A credit for on-street parking shall be granted for some or all the required off-street parking as provided in Subsection b. No additional parking spaces shall be required for conversion of a single family detached home to a triplex or quadplex. b. <u>On-Street Credit.</u> If on-street parking spaces meet all the standards in Subsections i-iv below, they shall be counted toward the minimum off-street parking requirement. i. On-street parking must be allowed on the side of the street where the space is to be provided. ii. The space must be a minimum of 22 feet long; iii. The space must be abutting the subject site; and iv. The space must not obstruct a required sight distance area. • ~~OPTION 3: The total number of off-street parking spaces required for a triplex or quadplex is the same as the total number of off-street parking spaces required for a detached single family dwelling in the same zone. (Note: The on-street parking credit could be offered in conjunction with this option as well.)~~ • <u>OPTION 4: The minimum number of required off-street parking spaces is based on the minimum lot size for a detached single family dwelling in the same zone, as provided below:</u> <u>o Zones with minimum lot size less than 5,000 sf: one (1) off-street parking space per development.</u> <u>o Zones with a minimum lot size of 5,000 sf or more: XX off-street parking spaces per development.</u>	Triplex – A local government may not require more than a total of three (3) off-street parking spaces. Quadplex – A local government may not require more than a total of four (4) off-street parking spaces. Nothing in this section precludes a local government from allowing on-street parking credits to satisfy off-street parking requirements. <i>(draft OAR 660-046-0105.5.b for Med Cities)</i>

C. Design Standards 1. <u>Applicability.</u>	Commentary: Our recommendation is to regulate four basic design elements for triplexes and quadplexes: (1) entry orientation, (2) windows, (3) garages and off-street parking areas, and (4) driveway approaches. For all other design elements, we propose deferring to the jurisdiction’s standards for single family dwellings. We also recommend prohibiting local mandates for garages or carports. a. New triplexes and quadplexes, including those created by adding building square footage on a site occupied by an existing dwelling, shall meet: - The design standards in subsections (2) through (5) of this section (C); and - All other clear and objective design standards that apply to detached single family dwellings in the same zone, unless those standards conflict with this code and except as specified in subsection (1)(b) of this section (C). b. The following standards are invalid and do not apply to triplexes or quadplexes allowed by this code: - Mandates for construction of a garage or carport. - Any design standards that apply only to triplexes, quadplexes, or multifamily development.	Commentary: Minimum compliance for design standards should allow, but not require, local governments to apply design standards to new triplexes and quadplexes, as long as they do not cause unreasonable cost or delay. The design standards of the model code are a “reasonable” safe harbor for communities.
2. <u>Entry Orientation.</u>	Update since MCTAC 6: The project team recommends essentially merging Options 1 - 4. This approach offers the most flexibility by allowing units to face the street, to be at a 45 degree angle, to face a common open space, or to face a porch, and exempts units separated from the street by other units. We also simplified the standards to make them less prescriptive. ~~OPTION 1:~~ At least one main entrance for each triplex or quadplex structure must face a street property line. <i>(Adapted from Tigard’s Quad standards.)</i> ~~OPTION 2:~~ At least one main entrance for each triplex or quadplex structure must be oriented toward a street, front lot line, or common open space that is adjacent to the street. <i>(Adapted from Salem’s standards for three and four family uses.)</i> RECOMMENDED OPTION (3): At least one main entrance for each triplex or quadplex structure <u>that is not separated from the street property line by a dwelling</u> must: a. Be within 8 feet of the longest street-facing wall of the dwelling unit; and b. Either: i. Face the street;~~i~~ ii. Be at an angle of up to 45 degrees from the street; ~~or~~ <u>iii. Face a common open space that is adjacent to the street; or</u> ~~iv~~<u>ii</u>. Open onto a porch. The porch must: (A) Be at least 25 square feet in area; <u>and</u> (B) Have at least one entrance facing the street; ~~or and~~ <u>have a roof.</u> ~~(C) Have a roof that is:~~ <u>No more than 12 feet above the floor of the porch; and</u>	--

	• OPTION 1: Off-street vehicle use areas shall not exceed 50 percent of the buildable width along each street. <i>(Adapted from Salem’s standards for three- and four-family uses. <u>Note:</u> We may need to include the method of measurement if this option is selected.)</i> • RECOMMENDED OPTION (2): Garages on the front facade and off-street parking areas in the front yard are permitted in compliance with the standards in subsections (a) and (b) of this subsection (C)(4). Garages and off-street parking areas that are separated from the street property line by a dwelling are exempt from meeting these standards. a. Outdoor on-site parking and maneuvering areas shall not exceed a total of forty feet wide or fifty percent of the lot frontage, whichever is less; and b. The combined width of all garages shall not exceed forty feet or fifty percent of the lot frontage, whichever is less. <i>(Adapted from Oregon City’s standards for 3-4 plexes. <u>Note:</u> We may need to include the method of measurement if this option is selected.)</i> • OPTION 3: <u>Garage Door Standards.</u> Garages that are separated from the street property line by a dwelling are exempt from meeting these standards. a. The maximum combined garage door width facing the street is 50 percent of the total building width. b. In addition to complying with the front setbacks for the respective zoning districts, the front of the garage or carport can be no closer to the front lot line than the longest street-facing wall of the dwelling unit that encloses livable space, except that: i. If there is a covered front porch, the garage or carport can extend up to five feet in front of the enclosed livable space, but no further than the front of the porch. ii. A garage or carport may extend up to 10 feet in front of the enclosed livable space if there is enclosed livable space or a covered balcony above at least a portion of the garage or carport. <i>(Adapted from Bend’s standards for duplexes and triplexes.)</i>	
5. <u>Driveway Approach.</u>	Update since MCTAC 6: <i>The driveway approach standards have been revised to: (1) eliminate unnecessary language limiting the number of driveways to three for triplexes or four for quadplexes, as it is very unlikely that more than three or four driveways would be built; and (2) to defer to the jurisdiction’s driveway spacing standards for local streets and access standards for arterials or collectors.</i> <i>Similar to proposed garage and parking area standards, we suggest limiting driveways for triplexes and quadplexes. The proposed standards are adapted from Bend’s standards for duplexes and triplexes. When applied to corner lots, these provisions currently are not entirely consistent with the objective of having at least one entrance fronting the adjacent street. To the extent this is a priority, additional changes may be needed. <u>Note:</u> Bend allows detached duplexes and triplexes, so these standards should work for detached units.</i> ~~Triplexes may have a maximum of [three] driveway approaches and quadplexes may have a maximum of [four] driveway approaches in compliance with the following:~~<u>Driveway approaches must comply with the following:</u>	--

	a. The total width of all driveway approaches must not exceed 32 feet per frontage, as measured at the property line. For lots or parcels with more than one frontage, see subsection (5)(c) of this subsection (C). b. Driveway approaches may be separated when located on a local street. If approaches are separated, they must <u>meet the jurisdiction’s driveway spacing standards applicable to local streets</u>.~~be separated by a minimum of seven feet.~~ c. In addition, lots or parcels with more than one frontage must comply with the following: i. Lots or parcels must access the street with the lowest classification. For lots or parcels abutting an improved or improvable alley, access must be taken from the alley. (<i>Note: “improvable” may need to be defined for this standard to be clear and objective.</i>) ii. Lots or parcels with frontages only on collectors and/or arterial streets <u>must meet the jurisdiction’s access standards applicable to collectors and/or arterials</u>.~~may have one driveway approach.~~ iii. Triplexes and quadplexes on lots or parcels with frontages only on local streets may have two driveway approaches not exceeding 32 feet in total width on one frontage or one maximum 16-foot-wide driveway approach per frontage.	
D. Conversions to Triplex and Quadplex	Internal conversion of an existing detached single family structure or duplex to a triplex or quadplex is allowed, pursuant to Chapter 1, Section C (Applicability), provided that the conversion does not increase nonconformance with applicable clear and objective standards.	~~Identical to~~ ~~Same as~~ <u>model code language.</u>

Chapter 4. Townhouses

Sections

- A. Permitted Uses and Approval Process
- B. Development Standards
- C. Design Standards

General Commentary: ECONorthwest and SERA Architects are analyzing potential economic and design feasibility issues associated with key development and design standards for townhouses. We will present initial results from that analysis at MCTAC 7 and in additional materials provided to the MCTAC between meetings. Some of the draft standards and recommendations are likely to be revised based on the results of the analysis.

Standard	Model Code	Minimum Compliance
A. Permitted Uses and Approval Process	<i>Commentary: The draft provisions for townhouses are the same as those for duplexes, triplexes, and quadplexes, except for the <u>underlined text</u>. Because townhouses typically involve land divisions, the different permitting processes need to be reflected. This section may need to be further fleshed out for subsequent drafts.</i>	~~Same as model code.~~ Local governments must permit townhouses outright in areas zoned for residential use that allow for the development of detached single family structures. Local governments must apply the same approval process to townhouse structures as applied to detached single family

Standard	Model Code	Minimum Compliance		
	Townhouse projects are permitted outright wherever they are allowed as provided in Chapter 1, Section C (Applicability). Townhouse structures are subject to the same approval process as that for detached single family dwellings in the same zone. <u>Creation of new lots or parcels as part of a townhouse project is subject to the applicable land division approval process.</u> Townhouse projects are subject only to clear and objective standards, approval criteria, conditions, and procedures. Alternatively, an applicant may choose to submit an application for a townhouse project subject to discretionary standards and criteria adopted in accordance with ORS 197.307, if such a process is available.	dwellings in the same zone. Creation of new lots or parcels as part of a townhouse project is subject to the applicable land division approval process. Local governments may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of townhouse projects pursuant to OAR 660-008-0015.		
B. Development Standards 1. <u>Applicability.</u>	<i>Update since MCTAC 6: We recognize that the provisions related to the applicability of a jurisdiction’s existing/other standards to townhouses still need to be further fleshed out, and will be for subsequent drafts.</i> <i>These draft provisions attempt to address the relationship between a local jurisdiction’s platting requirements and the model code standards.</i> a. Townhouses shall meet the standards in subsections (3), (4), (5), (7), (8), (10) and (11) of this section (B). b. Townhouse projects shall meet: • The standards in subsections (2), (6), (9), (10), (11), and (12) of this section (B). • Any applicable clear and objective platting standards, unless those standards conflict with this code. c. The following standards are invalid and do not apply to townhouses or townhouse projects allowed by this code: • Additional development standards of the applicable base zone related to the standards addressed under subsections (2) through (12) of this section (B). • Development standards of the applicable base zone related to lot dimensions, lot coverage, or the siting or design of dwellings. • The jurisdiction’s development standards that apply only to townhouses and that conflict with provisions of this code.	~~Local governments are not required to have an applicability section.~~		
2. <u>Number of Units.</u>	<i>Update since MCTAC 6: Our current recommendation is not to limit the maximum number of attached units for townhouses (Option 1). We don’t see an adequate rationale for limiting the number of units, and there are other factors that will limit the scale of development (block length, pedestrian connectivity requirements, possibly density, etc.). In addition, as MCTAC members have noted, limiting the number of units in a structure may limit flexibility and may not be appropriate for L-shaped or other less typical configurations. Rather than including a standard limiting the number of units in a single structure, we recommend using other standards to minimize any potential adverse impacts on the overall size of a row of townhouses.</i> <i>It may be desirable to limit the number of attached units in a townhouse structure, in order to limit the scale of development. For maximum number of attached units, Option 1 offers the most flexibility (no limit), while Option 2 is the most strict (flat limit for all zones). Option 3 offers a compromise wherein higher-density zones are allowed an unlimited number of detached units, and where the limit for lower-density zones is scaled to the minimum lot size in the zone. In all three options there is no maximum number of townhouse structures in a townhouse project.</i> • Minimum: A townhouse project must contain at least two (2) units. • Maximum: - o RECOMMENDED OPTION (1): There is no maximum number of consecutively attached units per townhouse structure. ~~o OPTION 2: The number of consecutively attached units per townhouse structure must not exceed [4 / 6] units.~~ ~~o OPTION 3: The maximum number of consecutively attached units per townhouse structure is based on the minimum lot size for a detached single family dwelling in the same zone, as provided below:~~ <table><tr><td>Minimum Lot Size in Zone</td><td>Maximum Number of Attached Units</td></tr></table>	Minimum Lot Size in Zone	Maximum Number of Attached Units	Local governments must require at least two attached townhouse units and must allow ~~up to at least~~ four attached townhouse units.
Minimum Lot Size in Zone	Maximum Number of Attached Units			

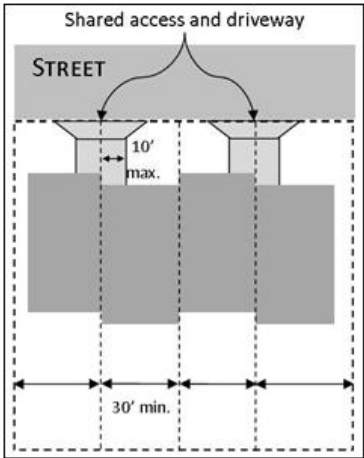
Standard	Model Code		Minimum Compliance																										
	Less than 3,000 sf 3,000 sf or more but less than 5,000 sf 5,000 sf or more	No limit 6 units 4 units																											
3. <u>Minimum Lot Size.</u>	Update since MCTAC 6: We eliminated Option 1 (flat minimum lot size) because we think it is more appropriate to scale the allowable intensity of townhouse development to the underlying base zone. We retained the other options, but suggest that a modified approach to lot size and density may be needed that could potentially allow smaller lots. The analysis provided by ECONorthwest and SERA Architects will assist in formulating that approach. This should be a key point of discussion at MCTAC 7. Options 2 and 3 scale the minimum lot size for townhouses based on the minimum lot size for detached single family dwellings and are intended to scale the allowable townhouse density to the allowed density in the zone. ~~OPTION 1: The minimum lot size for each townhouse is [1,400] square feet.~~ OPTION 2: The minimum lot size for each townhouse is based on the minimum lot size for a detached single family dwelling in the same zone, as provided below: <table><tr><th>Minimum Lot Size in Zone for a Detached Single Family Dwelling</th><th>Minimum Lot Size for each Townhouse</th></tr><tr><td>Less than 3,000 sf</td><td>1,400 sf</td></tr><tr><td>3,000 sf or more but less than 5,000 sf</td><td>1,800 sf</td></tr><tr><td>5,000 sf or more</td><td>2,000 sf</td></tr></table> OPTION 3: The minimum lot size for each townhouse is based on the GFA of each townhouse and the minimum lot size for a detached single family dwelling in the same zone, as provided below: <table><tr><th>Minimum Lot Size in Zone for a Detached Single Family Dwelling</th><th>GFA ≤ 800 sf Minimum Lot Size for each Townhouse</th><th>GFA > 800 sf Minimum Lot Size for each Townhouse</th></tr><tr><td>Less than 3,000 sf</td><td>1,400 sf</td><td>xx sf</td></tr><tr><td>3,000 sf or more but less than 5,000 sf</td><td>1,800 sf</td><td>xx sf</td></tr><tr><td>5,000 sf or more</td><td>2,000 sf</td><td>xx sf</td></tr></table>		Minimum Lot Size in Zone for a Detached Single Family Dwelling	Minimum Lot Size for each Townhouse	Less than 3,000 sf	1,400 sf	3,000 sf or more but less than 5,000 sf	1,800 sf	5,000 sf or more	2,000 sf	Minimum Lot Size in Zone for a Detached Single Family Dwelling	GFA ≤ 800 sf Minimum Lot Size for each Townhouse	GFA > 800 sf Minimum Lot Size for each Townhouse	Less than 3,000 sf	1,400 sf	xx sf	3,000 sf or more but less than 5,000 sf	1,800 sf	xx sf	5,000 sf or more	2,000 sf	xx sf	Commentary: A more refined minimum compliance standard for townhome minimum lot size will be provided once the feasibility analysis by ECONorthwest and SERA Architects is completed. The minimum lot size must not exceed the following: <table><tr><td>Interior lot</td><td>xx sf</td></tr><tr><td>Non-corner exterior lot</td><td>xx sf</td></tr><tr><td>Corner lot</td><td>xx sf</td></tr></table>	Interior lot	xx sf	Non-corner exterior lot	xx sf	Corner lot	xx sf
Minimum Lot Size in Zone for a Detached Single Family Dwelling	Minimum Lot Size for each Townhouse																												
Less than 3,000 sf	1,400 sf																												
3,000 sf or more but less than 5,000 sf	1,800 sf																												
5,000 sf or more	2,000 sf																												
Minimum Lot Size in Zone for a Detached Single Family Dwelling	GFA ≤ 800 sf Minimum Lot Size for each Townhouse	GFA > 800 sf Minimum Lot Size for each Townhouse																											
Less than 3,000 sf	1,400 sf	xx sf																											
3,000 sf or more but less than 5,000 sf	1,800 sf	xx sf																											
5,000 sf or more	2,000 sf	xx sf																											
Interior lot	xx sf																												
Non-corner exterior lot	xx sf																												
Corner lot	xx sf																												
4. <u>Minimum Lot Width.</u>	Update since MCTAC 6: We retained both options for consideration by the MCTAC; however, it may not be necessary to regulate both lot width and street frontage. 15’ and 20’ are typical standards for minimum townhouse lot width. In terms of actual development, 15’ is common for urban-style townhouses that are alley-loaded or do not have a garage. Townhouses with a street-facing garage that are less than 20’ could end up being all garage on the lower level. The latter issue could be addressed with design standards, as proposed in Section C. Because townhouses narrower than 15’ are not likely to be built, a minimum lot width standard may not even be necessary; as such, we included a “no requirement” option. OPTION 1: The minimum lot width for each townhouse is [15 / 20] feet.		Commentary: A more refined minimum compliance standard for townhome minimum lot width will be provided once the feasibility analysis by ECONorthwest and SERA Architects is completed. The minimum lot width must not exceed the following: <table><tr><td>Interior lot</td><td>xx sf</td></tr><tr><td>Non-corner exterior lot</td><td>xx sf</td></tr><tr><td>Corner lot</td><td>xx sf</td></tr></table>	Interior lot	xx sf	Non-corner exterior lot	xx sf	Corner lot	xx sf																				
Interior lot	xx sf																												
Non-corner exterior lot	xx sf																												
Corner lot	xx sf																												

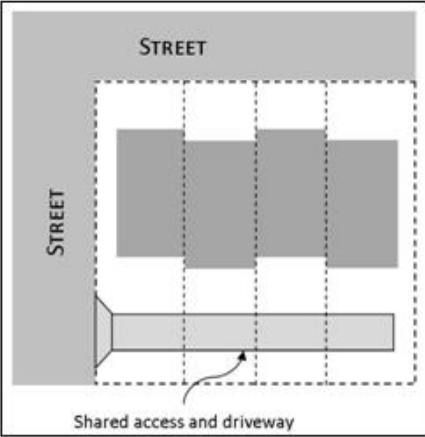
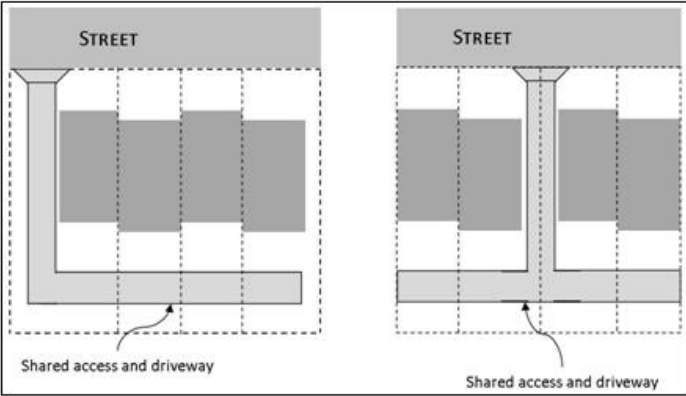
Standard	Model Code	Minimum Compliance
	OPTION 2: No requirement.	
5. <u>Minimum Street Frontage.</u>	<i>Commentary: We propose requiring townhouses to have frontage on <u>public</u> streets for the model code. Allowing frontage on private streets would offer more flexibility, but may be too complicated for the model code (e.g., what would the private street standards be?). We’ve also included a “no requirement” option in case the MCTAC thinks a public street frontage standard is unnecessary.</i> OPTION 1: Townhouses must have public street frontage of no less than [15 / 20] feet. OPTION 2: No requirement.	Local governments may allow frontage on private streets. Any minimum street frontage standard must not exceed XX feet.
6. <u>Maximum Density.</u>	<i>Update since MCTAC 6: We added a second option that would limit density for townhouse development commensurate with allowing a quadplex on a single family lot. In part, the rationale for adding this option is not to advantage townhouse development over triplex/quadplex development by allowing higher densities. As noted above under minimum lot size, we think an overall modified approach to minimum lot size and density may be needed. Similar to the triplex/quadplex chapter, this draft provision may need to be revised, based on the overall discussion about density allowances for middle housing.</i> OPTION 1: The maximum density for townhouse projects shall be determined by the minimum lot size as provided in subsection (3) of this section (B). The jurisdiction’s pre-existing density maximums do not apply. OPTION 2: For the purposes of calculating density, four (4) townhouses shall count as a single unit.	~~Same as model code.~~ DLCD’s approach to minimum compliance is still under development.
7. <u>Setbacks.</u>	<i>Update since MCTAC 6: Minor clarifications have been added, including allowing zero rear setback for lots with rear alley access and clarifying the interior side setback standard.</i> <i>Proposed standards for front and rear setbacks are the same as those for duplex and triplex/quadplex (deferring to single family setbacks). Side setback standards allow for attached units and require a small setback at the end of a townhouse structure.</i> Townhouses shall be subject to the following minimum and maximum setbacks: Front: The same minimum setback as applicable to detached single family dwellings in the same zone. Minimum front setbacks greater than 20 feet are invalid, except those applicable to garages or carports. Rear: The same minimum setback as applicable to detached single family dwellings in the same zone, except minimum rear setbacks greater than 15 feet are invalid. No minimum rear setback shall apply to lots with rear alley access. Street Side: The same minimum setback as applicable to detached single family dwellings in the same zone, except minimum street side yard setbacks greater than 20 feet are invalid. Interior Side: - The setback for a common wall lot line where units are attached is zero (0) feet. - The setback for an exterior wall at the end of a townhouse structure that faces an interior side lot line is five (5) feet.	A local government may not require front, side, or rear setbacks to be greater than those applicable to detached single family structures in the same zone and must allow zero-foot side setbacks for lot lines where townhouse units are attached.
8. <u>Height.</u>	<i>Commentary: The proposed standard defers to the maximum height in the base zone, but establishes a baseline height of 25 feet or two stories. The rationale is that townhouses would not be feasible if at least two stories are not permitted. While it’s not common, if a jurisdiction prohibits two-story</i>	Townhouses may not be subject to lower maximum height standards than those applicable to detached single family structures in the same zone, and local governments’ height standards must allow construction of at least two stories.

Standard	Model Code	Minimum Compliance										
	<i>structures, the model code would override the standard. <u>Note</u>: some elements will have to be defined in the model code in order to implement this standard (e.g., what defines a story and how height is measured).</i> Townhouses are subject to the same maximum height as applicable to detached single family dwellings in the same zone, except a maximum height of less than 25 feet or two stories is invalid.											
~~9. <u>Maximum Floor Area Ratio (FAR).</u>~~	Update since MCTAC 6: <i>Based on comments from the MCTAC and the project team’s discussions regarding financial feasibility, we recommend removing maximum FAR standards for townhouses. Because townhouses are on individual lots, the FAR calculation is not as straightforward as it would be for triplexes and quadplexes. Also, when combined with draft minimum lot size standards using the scale initially proposed, the resulting unit sizes within some zones are too small to make the townhouses financially viable. We suggest allowing lot size, frontage, setbacks, height, and minimum open space area standards to control the scale of development instead of maximum FAR.</i> ~~• OPTION 1: The maximum floor area ratio for a townhouse project is 0.6 to 1.~~ ~~• OPTION 2: The maximum floor area ratio for a townhouse project is based on the minimum lot size for a detached single family dwelling in the same zone, as provided below:~~ <table><tr><th>~~Minimum Lot Size in Zone for a Detached Single Family Dwelling~~</th><th>~~Maximum FAR for a Townhouse Project~~</th></tr><tr><td>~~Less than 3,000 sf~~</td><td>~~0.9 to 1~~</td></tr><tr><td>~~3,000 sf or more but less than 5,000 sf~~</td><td>~~0.7 to 1~~</td></tr><tr><td>~~5,000 sf or more but less than 20,000 sf~~</td><td>~~0.6 to 1~~</td></tr><tr><td>~~20,000 sf or more~~</td><td>~~0.4 to 1~~</td></tr></table> ~~•~~	~~Minimum Lot Size in Zone for a Detached Single Family Dwelling~~	~~Maximum FAR for a Townhouse Project~~	~~Less than 3,000 sf~~	~~0.9 to 1~~	~~3,000 sf or more but less than 5,000 sf~~	~~0.7 to 1~~	~~5,000 sf or more but less than 20,000 sf~~	~~0.6 to 1~~	~~20,000 sf or more~~	~~0.4 to 1~~	Commentary: <i>Similar to triplex/quadplex, minimum compliance standards for townhouses should allow, but not require, local governments to regulate scale or bulk using provisions such as floor area ratio, lot coverage, or unit size. DLCD is still developing OAR language that will limit the allowable bulk/scale controls so they do not cause unreasonable cost or delay.</i>
~~Minimum Lot Size in Zone for a Detached Single Family Dwelling~~	~~Maximum FAR for a Townhouse Project~~											
~~Less than 3,000 sf~~	~~0.9 to 1~~											
~~3,000 sf or more but less than 5,000 sf~~	~~0.7 to 1~~											
~~5,000 sf or more but less than 20,000 sf~~	~~0.6 to 1~~											
~~20,000 sf or more~~	~~0.4 to 1~~											
10. <u>Off-street Parking.</u>	Update since MCTAC 6: <i>Parking standards are being examined as part of the feasibility analysis by ECONorthwest and SERA Architects. Results of that analysis may inform revisions to the draft standards or selection of a recommended option.</i> <i>We are presenting three options for off-street parking standards: no minimum parking, one space per unit, or 50% of units. We did not include an option for on-street credits here, although those could be considered as well. Similar to triplex/quadplex, these standards will likely be further analyzed to assess their impact on financial and design feasibility for townhouses. That analysis may inform the selection of a preferred option. It is important to note that requiring off-street parking will typically result in elimination of most or all on-street parking for townhouses where off-street parking is accessed directly from the street frontage (due to curb cuts).</i> OPTION 1: No off-street parking is required. OPTION 2: The minimum number of required off-street parking spaces for a townhouse project is one (1) space per unit. (<i><u>Note</u>: spaces could be on individual lots or in a shared parking area on a common tract.)</i>) OPTION 3: The minimum number of required off-street parking spaces for a townhouse project is 0.5 space per unit. (<i>Same note as for Option 2.</i>)	A local government may not require more than one off-street parking space per townhouse unit.										

Standard	Model Code	Minimum Compliance
11. <u>Minimum Open Space and Landscaping.</u>	Update since MCTAC 6: We eliminated Option 2, which deferred to the local landscape standards for single family development, since those may not make sense when applied to a townhouse development. We also added an option for no open space requirement. Because townhouse lots may be quite small, it may be preferable to manage open space through setback regulations. OPTION 1: The minimum amount of required open space is [400] square feet per townhouse with a minimum smallest dimension of [14] feet. Open space must be landscaped to the planting standards applicable to detached single family dwellings in the same zone, and may be provided on individual townhouse lots or in shared common areas of a townhouse project. ~~OPTION 2:~~ A townhouse project shall meet the same minimum landscape area and planting standards as applicable to a detached single family dwelling in the same zone. OPTION 3: No requirement.	Commentary: Following is an initial draft with arbitrary figures intended to spark discussion. A local government is not required to regulate minimum open space area and dimensions, but if they choose to, the minimum open space may not exceed 25% of the minimum lot size or xx sq ft, whichever is less, and the minimum smallest dimension may not exceed the minimum lot width or 20 ft, whichever is less. A local government may establish provisions allowing the provision of open space through shared common areas.
12. <u>Areas Owned in Common.</u>	Commentary: It may not be necessary to include legal requirements for common area ownership in the model code; however, we are including them in this draft for MCTAC discussion. Common areas must be maintained by a homeowners association or other legal entity. A homeowners association may also be responsible for exterior building maintenance. A copy of any applicable covenants, restrictions and conditions must be recorded and provided to the jurisdiction prior to issuance of a building permit.	No requirement.
C. <u>Design Standards</u>	Commentary: Our initial recommendation is to regulate four basic design elements for townhouses: (1) entry orientation, (2) unit definition, (3) windows, and (4) driveway access and parking. Unlike for triplexes and quadplexes, we do not propose deferring to the jurisdiction’s standards for detached single family dwellings, which are unlikely to work for townhouses. New townhouses shall meet the design standards in subsections (1) through (4) of this section (C). <u>No other design standards shall apply to townhouses.</u>	Commentary: Minimum compliance for design standards should allow, but not require, local governments to apply design standards to new townhouses, as long as they do not cause unreasonable cost or delay. Similar to triplexes/quadplexes, DLCD is still developing its approach to limiting allowable design standards, but is considering two potential approaches: - Go through each type of design standard and set upper limits and parameters for what can be required/conditioned. - Indicate that the design standards of the model code are a “reasonable” safe harbor for communities, and not try to define parameters.
1. <u>Entry Orientation.</u>	Update since MCTAC 6: We recommended Option 2 (with some modifications) for the sake of flexibility and consistency with the triplex/quadplex standards. Subsection (b)(iii) was included to add flexibility in case the preferred option is not to require public street frontage for each townhouse lot. This may not be necessary or desirable if street frontage is required. ~~OPTION 1:~~ The main entrance of each townhouse must face a street property line. If a townhouse has more than one street property line, the entrance may face either street. RECOMMENDED OPTION (2): The main entrance of each townhouse must: - Be within 8 feet of the longest street-facing wall of the dwelling unit; and - Either:	--

Standard	Model Code	Minimum Compliance
	i. Face the street; ii. Be at an angle of up to 45 degrees from the street; ~~or~~ iii. Face a common open space or private access or driveway; or iviii. Open onto a porch. The porch must: (A) Be at least 25 square feet in area; <u>and</u> (B) Have at least one entrance facing the street; ~~and-or~~ <u>have a roof.</u> ~~(C) Have a roof that is:~~ ▪ ~~No more than 12 feet above the floor of the porch; and~~ ▪ ~~At least 30 percent solid. This standard may be met by having 30 percent of the porch area covered with a solid roof, or by having the entire area covered with a trellis or other open material if no more than 70 percent of the area of the material is open.~~	
2. <u>Unit definition.</u>	Commentary: Unit definition standards are proposed to avoid monotonous rows of flat, unarticulated townhouse facades. The standards are intended to be highly flexible, and could be met by a feature as simple as a recessed entry or porch. Each townhouse must include at least one of the following on at least one street-facing facade: a. A roof dormer a minimum of 4 feet in width, or b. A balcony a minimum of 2 feet in depth and 4 feet in width and accessible from an interior room, or c. A bay window that extends from the facade a minimum of 2 feet, or d. An offset of the facade of a minimum of 2 feet in depth, either from the neighboring townhouse or within the façade of a single townhouse, or e. An entryway that is recessed a minimum of 3 feet, or f. A porch meeting the standards of subsection (1)(b)(<u>iviii</u>) of this section (C). Balconies and bay windows may encroach into a required setback area.	--
3. <u>Windows.</u>	Commentary: The recommended window standard is the same as for triplex/quadplex. A minimum of 15 percent of the area of all street-facing facades on each individual unit must include windows or entrance doors. Window area is the aggregate area of the glass within each window, including any interior grids, mullions, or transoms. Door area is the area of the portion of a door other than a garage door that moves and does not include the frame. Half of the window area in the door of an attached garage may count toward meeting this standard.	--
4. <u>Driveway Access and Parking.</u>	Update since MCTAC 6: These driveway access and parking standards are being reviewed as part of the feasibility analysis by ECONorthwest and SERA Architects. The results of that analysis may inform revisions to the draft standards. The intent of the driveway access and parking standards is to promote a pedestrian-friendly environment by limiting the dominance of vehicle storage on the site. We are only presenting one option for driveway access and parking standards because the proposed standards (adapted from the City of Milwaukie’s rowhouse code) address various parking and access configurations. However, other options may be workable as well, and suggestions from the MCTAC are welcome. Also, depending on what option is preferred for the triplex/quadplex standards, it will be important to make sure the townhouse standards are generally consistent, because side-by-side triplexes and quadplexes could look nearly identical to townhouses. And it will be important to ensure that both development types are roughly equal in terms of design feasibility. Our team also is creating scaled diagrams to help assess the design feasibility of several of these standards.	--

Standard	Model Code	Minimum Compliance
	Note: The figures below are from the Milwaukie Municipal Code (MMC). If these standards are carried forward, we will create new graphics that depict driveways and parking areas that are more to-scale. a. Garages on the front façade of a townhouse, off-street parking areas in the front yard, and driveway accesses in front of a townhouse are prohibited unless the following standards are met. See Figure 1. i. Each townhouse lot has a street frontage of at least [20] ft on a local street. ii. A maximum of 1 driveway is allowed for every 2 townhouse units and must be shared by the units, except that each townhouse structure with three or more units may include 1 driveway that provides access to a single unit. iii. Outdoor on-site parking and maneuvering areas do not exceed [10 / 12] ft wide on any lot. iv. The garage width does not exceed [10 / 12] ft, as measured from the inside of the garage door frame. Figure 1. Townhouse Development with Front Yard Parking (MMC Figure 19.505.5.F.1.)  b. The following rules apply to driveways and parking areas for townhouse projects that do not meet all of the standards in subsection (a). i. Off-street parking areas shall be accessed on the back façade or located in the rear yard. No off-street parking shall be allowed in the front yard or side yard of a townhouse. ii. A townhouse project that includes a corner lot shall take access from a single driveway on the side of the corner lot. See Figure 2.	

Standard	Model Code	Minimum Compliance
	Figure 2. Townhouse Development with Corner Lot Access (MMC Figure 19.505.5.F.2.b)  iii. Townhouse development that does not include a corner lot shall consolidate access for all lots into a single driveway. The access and driveway are not allowed in the area directly between the front façade and front lot line of any of the townhouses. See Figure 3. Figure 3. Townhouse Development with Consolidated Access (MMC Figure 19.505.5.F.2.c)  iv. A townhouse development that includes consolidated access or shared driveways shall grant appropriate access easements to allow normal vehicular access and emergency access. c. Townhouse projects served by an alley providing access to the rear yards of all units are exempt from compliance with subsection (b). <i>(This item is from Oregon City’s townhouse code, which has access standards very similar to Milwaukie’s.)</i> POTENTIAL ADDITIONAL STANDARDS: - A garage shall not extend closer to the street than the furthest forward living space on the street-facing facade. <i>(A similar provision is included in Option 3 of the draft triplex/quadplex Garages and Off-Street Parking Areas design standards; however that option is not recommended.)</i> ~~Townhouses developed pursuant to this code shall not be subject to mandates for construction of a garage or carport. (Same as Option 4 of the draft triplex/quadplex standards.)~~ Commentary: Because Section C states that “no other design standards shall apply to townhouses,” this standard is not necessary.	



MEMORANDUM

Cottage Cluster Code Topics

DLCD Middle Housing Model Code

DATE June 18, 2020
TO MHMC Model Code Technical Advisory Committee (MCTAC)
FROM Matt Hastie, Cathy Corliss and Kate Rogers, Angelo Planning Group
CC Ethan Stuckmayer and Robert Mansolillo, DLCD Project Team

The purpose of this memo is to introduce cottage clusters and to provide a list of code topics that could be included in Part 4 of the Large & Metro Cities Model Code (LMCMC). Due to time constraints and the complexity of addressing a new type of middle housing in the model code, instead of drafting a full set of model code standards for cottage clusters, we are starting with an initial set of concepts meant to start the discussion and solicit ideas and direction from the MCTAC. This memo includes an overview of cottage clusters as a housing type and an outline of potential model code topics with key discussion questions highlighted. We will be seeking input on these questions at MCTAC 7 on June 25, 2020, and that discussion will inform the initial draft of cottage cluster model code standards presented at MCTAC 8 on August 4, 2020.

Cottage Cluster Overview

A cottage cluster development typically is defined as a small grouping of dwelling units appropriately sized for smaller households and available as an alternative to the development of typical detached single-family homes on individual lots. Cottage cluster development can help address the changing composition of households, and the need for smaller, more diverse, and often, more affordable housing choices. Cottage clusters can provide good opportunities for affordable homeownership. They also provide opportunities for innovation and diversity in housing and site design, with development that fits the scale of a single-family residential neighborhood. Cottage clusters also can help reduce site development costs, maintain open space, and foster a sense of community among residents.

Many jurisdictions in Oregon have adopted standards for cottage cluster housing (sometimes referred to as “cluster housing,” “cottage housing,” or “pocket neighborhoods”). Often jurisdictions allow cottage clusters on a single lot as well as allowing units on individual “fee simple” lots through a land division. The latter type of development typically necessitates cross-access easements and may have shared tracts of land to accommodate shared open space and parking areas. Cottage clusters on single lots can either be structured as condominiums with multiple owners or owned by a single entity and operated as

a rental property. Some jurisdictions only allow this type of housing through a discretionary process such as a Planned Unit Development or regulate cottage clusters as multifamily development (for units on a single lot).

Below are a few examples of cottage cluster development.



Credit: Angelo Planning Group

Wilder Cottages, Newport, OR



Credit: Google Earth



Credit: Ross Chapin Architects

Danielson Grove, Kirkland, WA



Credit: Google Earth

Cottage Cluster Code Topics

Below is an outline of types of code standards that tend to be most important to consider and implement for cottage cluster housing. We have identified some key considerations and questions for the MCTAC to consider in several places.

Definitions:

- “Cottage cluster” – HB 2001 provides a definition of a cottage cluster: A grouping of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

- For the model code, we propose narrowing the definition to mean housing located on a single lot or parcel. If individual dwelling units are allowed on their own lots, standards associated with setbacks, shared accessory structures, shared parking, access easements, etc. become a lot more complicated.
- Minimum compliance would allow units on individual lots, in addition to single-lot development.
- **Key Considerations:** The model code may need to address the potential overlap between a 4-unit cottage cluster and a quadplex with detached units.
 - If a quadplex has less restrictive standards than a cottage cluster, what is the advantage to being permitted as a cottage cluster?
 - Does this matter? Perhaps it is acceptable to allow an applicant to choose how a 4-unit development is defined, and for quadplex to be the default path for 4 detached units in terms of meeting the overall intent and objectives of HB 2001.
- “Common courtyard” will need to be defined.
- It may be helpful to have a definition for “cottage cluster project” to refer to a development with multiple clusters (similar to “townhouse project”).
- Other definitions may also be necessary.

Development & Design Standards:

- **Maximum density**
 - Potential options: (1) no maximum density (defer to minimum lot size); (2) allow four cottage units to be equivalent to one single family unit in terms of calculated density.
 - Limiting density would provide some parity between triplex/quadplex development and cottage clusters.
 - This may be a topic where SERA Architect’s input would be useful, to run some test fits and see how much density could result based on what could physically fit on a lot.
 - Note: HB 2001 provides a minimum density of 4 units per acre.

Question for MCTAC:

Should maximum density for cottage clusters be limited in some way? Or should density be regulated based on the size of a “cottage cluster project” lot?

- **Number of units**
 - Minimum: 4 is typical; however, HB 2001 establishes a minimum of 4 units per acre, rather than per cluster. Therefore, no minimum should be required.
 - Maximum: 12 is typical
 - **Key Considerations:**
 - Is a maximum number of units necessary?
 - The development could also be limited by requiring dwellings to have frontage on the common courtyard—which would be self-limiting at some point.

- Lot dimensions (particularly depth) would also be a limiting factor.
- Developments could be allowed to have multiple clusters, each centered around a common courtyard. The model code could potentially consider limiting the number of units per cluster (e.g., 8 units per cluster).
- With no limit to density or number of units, the model code could enable a tiny home community with potentially dozens of units. Is this okay? We should consider potential overlaps between cottage clusters and tiny home developments. Tiny homes on wheels could potentially be precluded in a definition of “detached housing unit” for the purposes of cottage cluster standards.

Question for MCTAC:

Is it important to regulate the maximum number of units in a cottage cluster development?

- **Unit size and height**
 - HB 2001 requires a maximum footprint of less than 900 sf.
 - Options for further limiting unit size:
 - Limit the floor area per unit.
 - Limit the average floor area across the site.
 - This would give more flexibility in allowing some larger units along with smaller units.
 - Limit unit size with a combination of maximum height (two stories or 25 ft) and maximum building footprint. (Two stories with 900 sf footprint = 1,800 sf.)
 - Limit maximum floor area ratio. (*Note: We can consider this but do not necessarily recommend this approach.*)
 - Building footprint or floor area also potentially could be used to limit the overall scale of the development. For example, the total building footprint could be limited to the equivalent of 6 x 900 sf if the maximum number of units per cluster was limited to six. This would allow flexibility for a larger number of small units, if desired.
 - **Key Consideration:** How should individual garages be accounted for, in terms of building footprint?
 - We suggest including individual garages (but not shared garages) in the footprint calculation, or otherwise limiting them to encourage shared parking.
 - Garages may be important to the marketability of cottage units.
 - This may be an important item for SERA Architects and ECONorthwest to test. How much square footage remains if a garage counts against the maximum footprint?

Questions for MCTAC:

Do you think unit size should be limited beyond the 900 sf footprint? If so, which approach do you prefer?

- **Dwelling types**
 - HB 2001 specifies detached units.
- **Setbacks**
 - Apply setbacks to the perimeter of the cottage cluster development.
 - We recommend against deferring to jurisdiction's setbacks for detached single family dwellings; rear setbacks could be especially prohibitive.
 - Could have building separation standards, and possibly spacing between units and shared parking areas.
- **Minimum lot size**
 - We recommend using the same standard as applies to triplexes/quadplexes (the most recent draft defers to minimum lot sizes for detached single family).
- **Common courtyard standards**
 - Minimum area:
 - Options for regulating minimum courtyard area: (1) minimum total area; (2) minimum area per dwelling unit; (3) percentage of the overall site.
 - We think it makes sense to scale the courtyard size to the number of units.
 - Minimum dimensions (e.g., no dimension less than 20 ft)
 - Note: minimum courtyard size and dimensions could warrant testing by ECONW and SERA.
 - Relationship to dwellings:
 - Minimum frontage from each dwelling. Or potentially limit the maximum length of a walkway that connects unit to the courtyard.
 - Maximum distance between dwellings and the courtyard.
 - Requirements for landscaping, recreational amenities, etc.
 - Should there be a minimum portion with vegetated landscaping?
- **Shared community buildings**
 - Allow a shared community building (or buildings) for use by the residents of a cottage cluster development.
 - **Key Consideration:** We suggest limiting the size of the community building(s) in some way.
 - The size could be limited by floor area.
 - It may be beneficial to apply the same 900-sf footprint limitation to the community building, so that if it is ever converted to a dwelling, it will not be nonconforming.
 - Perhaps the 900-sf footprint could apply if the community building meets the definition of a dwelling unit (i.e., has independent cooking and sanitation facilities).
- **Pedestrian access**
 - Require internal walkways to connect cottages, open space, parking, public sidewalk, etc.

- **Building design standards**
 - The design standards should be generally consistent with the standards for the other middle housing types.
 - Entry orientation (to the common courtyard).
 - Could also allow end units to orient to the public street; could potentially allow orientation to a pedestrian walkway.
 - Could require X% of cottages to face the courtyard.
 - Potentially require porches or covered entries. (It will be important to ensure any design standards do not preclude universal access for units.)
 - Minimum window coverage facing the street. Could potentially also require windows facing the common courtyard.
- **Parking**
 - Minimum off-street parking ratio.
 - **Key Considerations:**
 - Cottage clusters have been developed as below-market affordable housing. Consider allowing flexibility for lower parking ratios to reflect lower car ownership.
 - Potentially allow on-street parking credits to count toward requirement.
 - The model code could allow both individual parking spaces/garages and shared parking areas.
 - For shared parking areas, the size or number of spaces in each grouping could be limited.
 - Parking location/access/design standards:
 - Location from street / property lines
 - Parking structures – dimensional standards.
 - Limit vehicular access adjacent to the common courtyard.
 - Screening of parking areas.

Question for MCTAC:

What do you think an appropriate off-street parking ratio is?

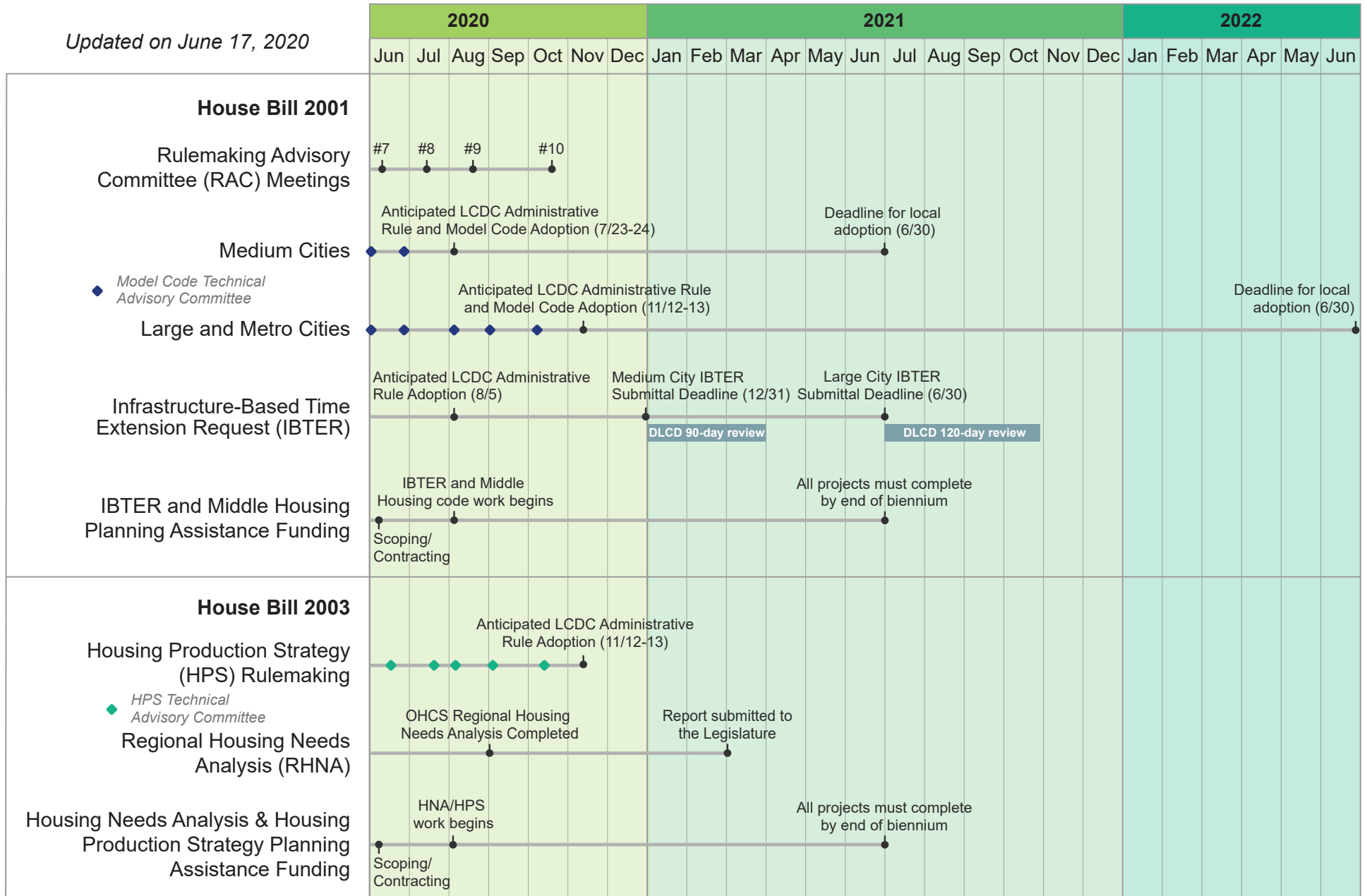
- **Nonconformance of existing structure**
 - Potentially allow an existing single family home to be included in a cottage cluster development; allow it to be nonconforming to the model code standards, but not to increase nonconformance.



Implementation Timeline

House Bill 2001 and House Bill 2003

Updated on June 17, 2020



**PAALF Focus Group Summary
Zoom Meeting
June 29, 2020**

Key Points

HB 2003

- Participants mentioned the frustration with seeing so many vacant rental units on the market, especially juxtaposed with so many unhoused individuals on the streets. There is a desire to have cities report on vacant rental units, especially if landlords own several properties.
- There was further discussion around lack of infrastructure for housing. There needs to be housing where there is access to green spaces, safe sidewalks, reliable transportation, etc. This problem has become particularly evident the further East housing is located within the City of Portland. A similar thread to ADA accessibility, too, was mentioned, where there is a desire to have updated ADA infrastructure, too, in homes and in streets.
- When it comes to housing access, participants mentioned it's not just about different types of housing available, but also thinking about how people get into housing. Currently, subsidized housing primarily favors those with children or families, not leaving much room for single or elderly individuals. Rental agreements also need to be at least a year long, with only 5% increases, in order to bring longer-term stability.
- When it comes to housing discrimination, participants mentioned that a large, prohibitive fine should be applied towards landlords who have discriminated against BIPOC, as well as for slum lords who have increased rents without updating their units.

HB 2001

- Over the long-term, more affordable homeownership options such as co-ops and land trusts need to be taken into consideration, as tenants look towards affordability in the long-term.

Attendees:

Samuel Garcia, DLCD
Sean Edging, DLCD
Joy Alise, PAALF
Shani
Danielle Odetta
Jamila Dozier
Kristina Mucker

Ebon
Sadie Atwell
Sharde
Stephanie Wirfs
Ari Schill
Carolyn Anderson

Rulemaking Advisory Committee Meeting #8

July 14, 2020; 11:00 am – 3:00 pm

Department of Land Conservation and Development (DLCD)

Zoom Virtual Meeting



Public Comment Summary June 4 – July 7, 2020

Date	Commenter	Commenter Type	Comments Summary	Comment Type
6/5/2020	Ed Sullivan	RAC	Feedback on various items included in the RAC7 meeting packet, specifically on proposed approaches for the Housing Production Strategy, Infrastructure Based Time Extension Request, and the approach for defining "in areas" as specified in HB 2001. Specifically: - Indication that the basis of HPS report requirements go beyond HB 2001 and 2003 and also include Goal 10 and federal/state fair housing law. - Advocates for the use of qualitative and quantitative standards for ensuring HPS progress - Specific edits to IBTER rule language and emphasis that well off communities have a greater burden to justify an IBTER - Advocates for the "whittle away" (now termed "presumptive") approach in defining "in areas" as specified in HB 2001. - Questions and concerns regarding the specifics of Large City HB 2001 compliance and implementation. - Emphasis that the recent death of George Floyd make the need apparent for addressing historic patterns of racial segregation in land use planning.	Letter
6/8/2020	Peggy Lynch	RAC	Feedback on various items included in the RAC7 meeting packet, specifically on proposed approaches for the Housing Production Strategy, Infrastructure Based Time Extension Request, and the approach for defining "in areas" as specified in HB 2001. Specifically: - Indication that cities should have some discretion on where higher middle housing types are allowed	Email

			- How to assess and meet needs of people facing homelessness in the HPS. Caution against counting temporary shelter as housing. - Ensuring taxpayers are included as part of HPS engagement - Clarification on bond measures used in conjunction with an IBTER - How to appropriately assess equity implications of an IBTER - Ensuring goal-protected lands are protected from excessive development	
6/8/2020	Kim Travis	TAC	Provides a link to a Fair Housing Council of Oregon checklist outlining land use policies that provide a concrete set of recommended land use strategies for reducing barriers to fair housing.	Email
6/9/2020	David Martineau	Staff	Comments on the draft Large and Metro Cities Model Code. Advocates in general for the administrative rules to provide local jurisdictions in regulating middle housing types, specifically in relationship to the application of off-street parking requirements, density maximums, the provision of detached plexes, and defining where higher middle housing types may be permitted.	Letter
6/10/2020	Elizabeth Decker	Public	A letter from Elizabeth Decker, Neil Heller, Kol Peterson, and Eli Spevak raising several concerns and recommendations related to development standards in the Large and Metro Cities Model Code. The letter suggests that the proposed Model Code and Minimum Compliance standards would unfairly limit the development of plexes in a manner that is more restrictive than those applicable to single-family detached dwellings. Specific recommendations to ameliorate these concerns include: - Revising the minimum lot size recommendations to be the same for triplexes and quadplexes as for single-family dwellings in the underlying zone - Not considering minimum lot size as a "siting and design" standard consistent with Kamps-Huges III, LUBA No. 2019-115 - Similar setbacks to single-family detached dwellings with maximum parameters for required setbacks - Regulating scale and bulk in a manner	Letter

			identical to single-family detached dwellings, in both the minimum compliance and the model code - Either abandonment of FAR in favor of scale/bulk regulations applicable to existing single-family detached dwellings, or an overall maximum FAR of 1.0, or a sliding scale FAR based on minimum lot size for plexes.	
6/12/2020	Jane Morrison	Public	A letter from the Jennings Lodge Community Planning Organization, which calls for better clarification surrounding the term "sufficient urban services" as defined in ORS 195.065. The letter raises concerns regarding the sufficiency of infrastructure in Jennings Lodge as well as who pays for improvements.	Letter
6/15/2020	Brian Martin	RAC	A letter from Brian Martin providing three conceptual approaches to clarifying a key provision of House Bill 2001: "All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings". The letter calls for providing local jurisdictions flexibility in implementing the law within local context. The three options include: - An option requiring local jurisdictions to establish boundaries that define areas - An option requiring local jurisdictions to establish boundaries that define areas with parameters to address "significant development of middle housing", locational considerations, and equity considerations - An option similar to the second option, but providing minimum percentage thresholds on which middle housing is permitted.	Letter
6/15/2020	Ellen Miller	RAC	A letter submitted on behalf of the Oregon Home Builders Association outlining proposed revisions to the Model Code and Minimum Compliance Standards for Large and Metro Cities. The letter argues that some revisions to siting and design standards are necessary to ensure that townhouses are both feasible to build and easier to provide on fee-simple lots in recognition that there should be no discernable difference between a plex and townhouse, other than the underlying lot configuration. The letter offers the following specific recommendations: - Default to existing lot frontage standards for	Letter

			local jurisdictions - Remove applicability of FAR to townhouses - Remove open space/landscaping standards - Remove requirements for common areas - Remove required design elements that add cost and complexity to townhouse projects. - Limit local governments from prohibiting less than ten attached units in a townhouse project - Limit local governments from limiting townhouse lot dimensions, density, minimum parking, height, and setbacks - Limit design standards (entry orientation, windows, and driveway access/parking) in both the Model Code and Minimum Compliance standards.	
6/17/2020	Ed Sullivan	RAC	A letter from Ed Sullivan outlining comments on strategies used in a Housing Production Strategy, developed in conversation with other housing advocates. The letter provides commentary and considerations about a variety of potential strategies in development, raising issues related to the potential effectiveness, legal/constitutional authority, implementability, costs, and cost payers associated with various strategies, especially for provisions related to SDCs. The letter advocates incorporation of a Fair Housing Council of Oregon document outlining code revisions that would better support fair housing in local jurisdictions.	Letter
6/18/2020	Andree Tremoulet	TAC	An email advocating for OHCS and DLCD to utilize data sources such as Redfin, Zillow, and COSTAR to develop a better centralized data source to understand rental and owner housing information. This information could be presented to local jurisdictions on a regular basis and used to inform Housing Production Strategy reporting.	Email
6/21/2020	Andree Tremoulet	TAC	A memorandum outlining recommended changes to the proposed Housing Production Strategy Report requirements and guidance, including: • Requiring cities to identify the housing classifications by tenure, affordability, and housing type that they intend to focus on in their strategies. • Encouraging cities with Consolidated Plans or an Analysis of Impediments/Fair Housing Plan	Letter

			to incorporate resources and actions from these plans in their responses, thus encouraging dialogue and coordination between land use/long range planners and those managing federal housing resources within cities. • Recommending that staff continue to refine the five questions and get additional input from communities of color and suggesting that gentrification be included for cities where it is a factor. • Recommending that staff further consider the benefits of incorporating elements of a “fair share” approach to calculating the number of houseless households to avoid encouraging cities that have few houseless households due to a meager service network and strict enforcement of nuisance ordinances to continue those practices.	
6/24/2020	Michael Andersen	Public	A letter from the Sightline institute advocating for minimum compliance standards that reduce the burden of off-street parking requirements on plex development feasibility. Recommendation for off-street parking requirements: The minimum compliance standard should legalize triplexes that create exactly two off-street parking spaces, and fourplexes that create exactly three. In addition, the state should require cities to let any adequate curbside space adjacent to the property count toward any parking that may be required beyond the first two off-street spaces. Rationale for the recommendation: Zero-car households are common everywhere in Oregon. Most Oregonians would probably prefer buildings legalized by HB 2001 to be attractive. The state's new economic analysis just concluded that fourplexes will be particularly important to housing production under HB 2001. Oregon should ensure that its codes align with state policies, especially GHG emission reductions.	Letter
6/25/2020	Daniel Pauly	Staff	A letter from planning staff at the City of Wilsonville expressing concern regarding the RAC approach to defining "in areas zoned for residential use that allow for the development	Letter

			of detached single-family dwellings". The letter raises concerns that the "whittle away" approach may make master planned communities, which would enable the provision of higher middle housing, illegal under the proposed rule. The letter recommends transitioning either to a performance metric approach or incorporating a "positive performance" approach that would allow for housing developments, master planning, and PUDs that better incorporate middle housing in comparison to alternatives.	
6/25/2020	Ellen Miller	RAC	Email provides suggested approach for defining FAR: Floor area is defined by actual livable floor space. Calculation should not include garage. Count the stairs once, measure from the inside of the walls of the living unit and deduct for interior walls. For example a 10' - 2 x 4 wall is (10' x 4") or 3.33'. You would deduct this from the FAR. If you have a wall sitting on the floor it is not an actual floor or usable space.	Email
7/1/2020	Ed Sullivan	RAC	An email informing DLCD staff of a recent decision by the Oregon Court of Appeals regarding Kamps-Hughes v. City of Eugene (2020), which affirmed the decision by LUBA. This decision has implications for the meaning behind the phrase "siting" in "siting and design".	Email
7/1/2020	Kelly O'Neill	Staff	An email urging DLCD staff to not allow flexibility to local jurisdictions that would lead to removal of middle housing within certain areas within a city and allow additional exclusionary zoning within a city. Allowing this runs the risk of perpetuating patterns of housing segregation.	Email
7/3/2020	Michael Andersen	Public	A letter from Michael Andersen on behalf of sightline and various members of the RAC/TACs advocating for a tiered approach to parking requirements for the minimum compliance section. The underlying rationale is that excessive parking requirements will render plexes infeasible on smaller lots.	Letter

7/3/2020	Eli Spevak	Public	A letter advocating for the allowance of cottage cluster development in the Model Code on fee-simple taxlots to better facilitate their development. The letter includes a variety of specific recommendations to increase cottage cluster feasibility and provide greater ownership options.	Letter
7/3/2020	Mary Kyle McCurdy	RAC	A letter advocating for the use of the "whittle away" approach in defining "in areas" as specified in House Bill 2001. The letter includes several arguments as to why the "balloon" approach has in relationship to equity and consistency with the intent of HB 2001. The letter also recommends that the RAC and TAC begin determining which protective measures would cause areas to require regulations for housing types beyond duplexes.	Letter

ED SULLIVAN COMMENTS ON DRAFT HOUSING PRODUCTION STRATEGIES ADMINISTRATIVE RULES

Here are my responses to the questions raised in RAC Meeting Packet Item #7: Housing Production Strategies Memo:

[#1] Equity, Homelessness, and Fair Housing – What DLCD can require cities to consider within Housing Production Strategy Reports are somewhat limited by statute language. Knowing the inequity in housing is a major issue to be addressed, DLCD has worked to include equity considerations throughout each of the major sections of an HPS Report. Do you feel this proposed structure lends itself to a city being able to understand and address housing inequities in their community? How might the minimum requirements and proposed guidance be reorganized to better address this issue?

EJS Response: The basis for consideration of HPS reports is not limited to HB 2001 or 2003, but also includes the Federal Fair Housing Act (which applies to local governments), 42 U.S.C. sec. 3601 et seq., but also the Oregon Fair Housing Act, specifically ORS 659A.421(2)(j), Goal 10, OAR 660-008-005(4)(b), 0010, which should be added to the authority relied upon in the rulemaking statement. Entitlement jurisdictions are subject to federal Affirmatively Favoring Fair Housing standards as well.

[#2] Land Conservation and Development Review Criteria – Are there other specific housing needs or review criteria that you feel the Commission should consider when reviewing a city's Housing Production Strategy for compliance? A list of proposed criteria is included in Section 6 of HB 2003.

EJS Response: These are details best left to professional planners; however, as a former legal practitioner, it seems to me you must include qualitative standards (accompanied by a “best practices” memo from OHCS and DLCD) and quantitative standards (which explain how the local government did or did not increase housing production using the measures it represented previously to do do).

[#3] Housing Production Strategy Tools/Actions/Policies – A list of tools/actions/policies that a city may implement to facilitate the production of housing is being compiled at this link: https://docs.google.com/document/d/1wg091osMPyOML3TYtKu01895xsi47ZMVOhp_18Am8E/edit. Please share this list widely with your networks. The goal is to provide as many possible housing production strategies as possible for future reference as cities begin adopting Housing Production Strategies. This list of strategies will be included in a DLCD guidance document published after rulemaking has concluded. What specific tools/actions/policies should be added to this list?

EJS Response: I have shared the list with my network and have asked for a response by June 15th.

[#4] Purpose, Applicability, Definitions – Are the rules proposed within sections 660-046-0300 through -0320 clear and understandable? Do you have any suggested edits to this section, and if so, why? Specific language suggestions are preferred, but not required.

EJS Response:

1. I would add these definitions to 660-046-0010;
2. The second sentence of the definition of “infill” prescriptive or connect it to the first sentence;
3. Change the last word in the definition of “service levels” from “rules” to “law;”
4. Define “underdeveloped.”

[#5] Parameters and Application Thresholds – Are the rules proposed within sections 660-0460330 and -0340 clear and understandable? Do you have any suggested edits to this section, and if so, why? Specific language suggestions are preferred, but not required.

EJS Response: Yes, generally.

[#6] Application Timeline and Requirements – Are the rules proposed within section 660-0460350 clear and understandable? Do you have any suggested edits to this section, and if so, why? Specific language suggestions are preferred, but not required.

EJS Response: Yes, generally.

[#7] Equity Considerations – Additionally, what do you think of the requirement for a narrative discussing mapped areas of opportunity within a jurisdiction in relation to the IBTER request? Is this a useful or necessary consideration? Are there specific questions that should be asked in relation to this exercise, and if so, what are they? Is there a different way you would suggest for us to incorporate equity considerations into the IBTER process?

EJS Response: There should be a greater burden on better-off communities to justify an IBTER to avoid its housing obligations and a stated greater openness by LCDC to use its Enforcement Order powers if the IBTER be unjustified or is used as a stalling tactic.

[#8] Review Process, Approval Criteria, and Additional Time Extensions – Are the rules proposed within sections 660-046-0360 and -0370 clear and understandable? Do you have any suggested edits to this section, and if so, why? Specific language suggestions are preferred, but not required. The additional time extension process included in Section -0370(2) was included to address concerns that a local government may be unable to address an infrastructure constraint as planned, for reasons outside local government control. Do you have any specific concerns or suggestions regarding this provision?

EJS Response: Generally, yes.

[#9] “In Areas” Discussion – The DLCD Housing Team is looking for RAC guidance in determine a preferred approach to defining “in areas” referenced in HB 2001. We are proposing two approaches to consider, the “Whittle away” and “Balloon” approaches. Please provide the option you prefer and a brief statement as to why. You will be provided more room to expand on your selection in the following questions.

EJS Response: I think the “whittle away” approach is the only one authorized by HB 2001. The “balloon” approach is, as noted by staff, impractical and raises issues of equity and consistency with the obvious intent of HB 2001.

[#10] “In Areas” Discussion – The “whittle away” approach is to allow as many lots or parcels as possible to qualify for higher middle housing type development, only removing those that conflict with Goal-protected and natural hazard areas (constrained lands), as well as infrastructure constrained areas. Please provide your thoughts to this approach and how it could be refined.

EJS Response: If this was the approach that the legislature wanted to take in HB 2001, it would have said so.

Page 68 of 156 [#11] “In Areas” Discussion – The “balloon” approach is based on categorical locational services, such as public transit, existing higher density areas, and mixed residential and commercial or employment use zones. This approach would encourage middle housing development in areas that are already higher density and have transportation services. Please provide your thoughts to this approach and how it could be refined.

EJS Response – It’s certainly nice to encourage higher density development in areas suitable for those uses (although it might be asked why these areas weren’t rezoned to higher densities in the first place), but HB 2001 has run the ball far beyond that point, leaving it to the market to decide whether an increased density should be accommodated on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. The proposed new rules allow for additional housing choices. Not every such lot or parcel will take advantage of increased density. (In fact, the legislature has estimated that an increase in overall density of 3% is the likeliest outcome.) We should adopt the rules and let the market decide.

[#12] Large and Metro Cities Model Code Parts 1 – 3 – The model code and minimum compliance standards are not a major topic of discussion at RAC7. However, they have been provided for your reference. The document in packet item #11 is the most up to date version of the large and metro cities middle housing codes and includes an explanation of the changes

made since that time the RAC reviewed the code with the addition of Part 3, which relates to standards for townhomes. Please provide any comments you may have on Parts 1 – 3 of this document.

EJS Response: Three general concerns:

- 1. I worry about “infrastructure-deficient” areas. They are urban, but they have no IBTER obligation to deal with those deficiencies. Under Goal 11, all urban areas in the cities covered by these proposed rules, are to be served and urbanized within 20 years of the adoption or revision of the comprehensive plan. The proposed rule does not concern itself with any ultimate service obligation and leaves open the possibility that certain areas are neither served nor proposed to be served. That regulatory gap needs to be filled.**
- 2. Mixed use areas with residential uses may also escape application of the rules. Under standard C2 of the chart concerning Combined Standards for All Middle Housing (p. 6), mixed uses are not subject to these rules, leaving open the ability to evade the housing obligations.**
- 3. Finally, a practical question. We know that if a local government fails to adopt the required standards, the Model Codes come into effect. But what if a local government adopts some, but not all, of the standards or adds a standard or two of its own – Does the whole of the model code come into operation, or is only the offending standard replace by its analogue in the Model Code.**

[#13] Additional Comments – Please provide any general or additional comments or feedback here.

EJS Response: The death of Floyd George provides ample justification to counteract the age-old patterns of racial and ethnic segregation in everyday land use regulations. This rulemaking process provides the medium in which we can affirm our best ideals of equality and justice. We should take advantage of this opportunity.

From: Peggy Lynch [mailto:peggylynchor@gmail.com]
Sent: Monday, June 8, 2020 4:08 PM
To: Taylor, Casaria <ctaylor@dlcd.state.or.us>
Cc: Debbie Aiona <debbieaiona@fastmail.com>; Nancy Donovan <nancy.donovan@icloud.com>; Peggy Lynch <peggylynchor@gmail.com>
Subject: RAC Mtg. # 7 Comments on the packet

DLCD Housing Staff & RAC members: Sorry this is last minute, but did want to put some comments down before the mtg. tomorrow--based on review of LWVOR's Housing Team.

General comment about "areas": Although we look forward to the conversation around the "whittle away" vs. "balloon", **we do believe the legislation had two competing goals: To assure there were opportunities in all larger cities for the triplex and above middle housing, but there was also an understanding that these cities would have some discretion on where they would be most successful and improve community livability.**

We appreciate the comments made under Q6 on page 32.

We look forward to hearing more about such ideas as:

lot size (5,000 sq ft or larger? for instance. Require over, allow under?)
corner lots?

within transition zones to commercial or other jobs related zones?

proximity to transit (and should this need to be revisited every 2 years or when transit routes are changed)?

This is where jurisdictions have a variety of zoning designations and it's hard to find a way to address them in a general code setting.

Packet Page 71, #1: Housing needs of homeless population? We would hope this means real units and NOT shelters. Shelters are meant as short term solutions but not real long term housing. (Having information about shelters might be helpful. Some are only open in winter, for instance. That's not "housing") Would DLCD expect jurisdictions to assess their homeless population for singles, families, disabled, etc.? Stand alone units vs. apartments? With supportive services or just units? LWVOR wants housing for this population but we're unclear as to the capacity of local jurisdictions to conduct this analysis. A cot in a shelter should not count as a housing unit. **(See also Packet Page 73 related to homeless counts.)**

Packet Page 71, #2: Engagement. Again by narrowing the engagement into only two parts (housing consumers & housing producers) you are missing all property owners who may be required to pay taxes on some strategies. We appreciate the clear direction to engage underrepresented communities, but public engagement needs to be as broad as possible to assure support for adopted strategies. (See also Packet Page 74 Engagement)

Packet Page 81 related to failure of an infrastructure bond: Does this say that failure to pass a bond OR find another way to pay for the infrastructure mean that the jurisdiction needs to allow middle housing anyway--without the infrastructure needed to support same?

Packet Page 86, Bonds: Shouldn't the FIS also state that there could be a cost to hold the public vote? That's a separate cost from the bonds themselves.

Page 90 Equity Implications: We have concerns around the use of the opportunity zones mapping. There is a need to both locate middle housing close to good schools, transit, parks, libraries, grocery stores, etc. as well as in areas where these might not exist today--because we need to encourage investments in all these community amenities in ALL areas of cities. This is part of the IBTER discussion where allowing a city to hold off FOR A SHORT TIME implementation of middle housing so that good roads and sidewalks can be improved. And, in the "areas" discussion, we shouldn't allow huge swaths of any city to be exempt from providing needed housing for all.

Page 94 Constrained Lands: Again, we want to be sure that middle housing is built, but want to be sure that local jurisdictions have the mapping/rules and regulations to protect excess building on "constrained lands". Wetlands and high hazard areas are not safe for homes.

Thanks for considering these comments. "See" you all tomorrow. Best, Peggy Lynch, Debbie Aiona and Nancy Donovan, LWVOR

From: [TRAVIS Kim * HCS](#)
To: [Allan Lazo](#)
Cc: [Edging, Sean](#)
Subject: Examining Local Land Use checklist
Date: Monday, June 8, 2020 10:35:36 AM
Attachments: [image001.png](#)

Good morning! I hope you both had a nice weekend.

I was reading through Oregon's 2019 Fair Housing Action plan and found a reference to this excellent work product from FHCO, called "Inclusive Communities Toolkit":

<http://fhco.org/index.php/information-for-jurisdictions/affh>

Scroll to the Checklist PDF which provides a linkage to development code language. I'm wondering the checklist can become a requirement for jurisdictions to complete as part of the HPS process? It's a very tangible set of recommendations for jurisdictions to review & address.

Looking forward to more discussions on the topic.

Thanks, Kim

Kim Travis
Housing Integrator
[Oregon Housing & Community Services](#)
725 Summer St NE, Suite B | Salem, OR 97301
C: 503-428-3843
Kim.travis@oregon.gov
Pronouns: she | her | hers

MCTAC Meeting Packet Item #6: Large and Metro Cities Preliminary Model Code

[#1] Definitions (memo pages 3-6) – Triplex and Quadplexes are defined as three or four units on a lot or parcel in any configuration. Should the minimum compliance standards in Division 46 match this definition or allow local governments the flexibility to define these housing types as attached or detached?

Minimum compliance standards should allow local governments the flexibility to define these housing types as attached or detached.

Chapter 3. Triplex and Quadplex

[#2] Development Standards (memo page 9-13) – 3. Minimum Lot Size – Minimum lot size based gross floor area was favored by both the project team and the TAC members at our last meeting. The specific square footage of a triplex/quadplex that would warrant an increased minimum lot size is yet to be finalized. The project team is using 2,800 SF as an example in this draft of the model code and will revisit this standard when ECONorthwest and SERA Architects complete an economic and design feasibility analysis. Other than the specific square footage distinction, do you agree with the criteria used to calculate lot sizes?

Important to keep in mind that when we're discussing minimum lot sizes in a given single family zone, our jurisdiction allows up to 30% of lots created through a land division may be smaller than the average minimum lot size; therefore, minimum lot size should refer to the average lot size allowed in the zone. Other cities may do the same.

[#3] Development Standards (memo page 9-13) – 8. Regulating Scale/Bulk – Maximum Floor Area Ratio (FAR) was the preferred choice to regulate scale and bulk of buildings. Two additional options for FAR standards need to also be considered: Option 2a applies a flat FAR to all triplex and quadplex structures, regardless of minimum lot size. Option 2b scales the allowable FAR based on the minimum lot size in the zone. Which of these options do you prefer?

Option 2b considers the minimum lot size in the zone and is the better choice in terms of regulating scale and bulk using the maximum floor area ratio (FAR). However, maximum lot coverage is still a reasonable alternative when combined with minimum setbacks and building height and should remain as an acceptable local option, keeping in mind that single family dwellings may be regulated in that manner and we would be treating duplexes, triplexes and quadplexes differently if we apply FAR to regulate their scale and bulk.

[#4] Development Standards (memo page 9-13) – 9. Off-Street Parking – Three options have been provided for triplex and quadplex off-street parking. Which of these options do you prefer? Are there options not listed that should be considered?

Off-street parking should be left up to the jurisdiction and not dictated through minimum standards in the model code. As a TAC member stated at the 4/21/20 MCTAC meeting, the ability to count on-

street parking towards meeting the minimum requirement only works if you know that on-street parking will actually be available.

[#5] Design Standards (memo page 13-18) – C. Design Standards – DLCD is still developing its approach to reasonable design standards for triplexes and quadplexes, but is considering two potential approaches:

1. Go through each type of design standard and set upper limits and parameters for what can be required/conditioned.
2. Indicate that the design standards of the model code are a “reasonable” safe harbor for communities, and not try to define parameters.

Which of these two options do you prefer for regulating the design of triplexes and quadplexes?

Again, give jurisdictions the flexibility to determine reasonable design standards for triplexes and quadplexes. Should treat the same way as single-family and duplex dwellings, and not require more stringent standards. Triplexes or quadplexes separated from the street lot line by a dwelling should be exempt from meeting the entry orientation standard, as suggested in Option 4 of (C)(2). If triplexes and quadplexes are constructed as detached units on a lot, design standards should apply only to units oriented to the street. If garages and/or carports are required by infill standards, units not otherwise oriented to the street may be exempt from those requirements.

Chapter 4. Townhomes

[#6] Development Standards (memo page 17-21) – 2. Number of Units – It may be desirable to limit the number of attached units in a townhouse structure, in order to limit the scale of development. Two units are proposed as a minimum, however, there are three options for a maximum number of units. The options range from no maximum number required to a scaled maximum based on lot size. Which of these options do you prefer?

Scaled maximum number of units based on minimum lot size.

[#7] Development Standards (memo page 17-21) – 3. Minimum Lot Size – Three options for minimum lot size are presented. Option 1 applies a flat minimum, whereas Options 2 and 3 scale the minimum lot size for townhouses based on the minimum lot size for detached single family dwellings. Options 2 and 3 are intended to scale the allowable townhouse density to the allowed density in the zone. Which of these options would be most applicable for a model code? Please keep in mind, minimum lot size should be considered together with maximum floor area ratio standards.

Option 3.

[#8] Development Standards (memo page 17-21) – 9. Maximum Floor Area Ratio – Maximum FAR would apply to the entire townhouse project rather than individual lots. That means that for projects with shared open space tracts or other common areas, the FAR on individual lots could be much higher. Of the two options proposed, which would you prefer? The FAR standards should be considered together with minimum lot size standards.

[#9] Development Standards (memo page 17-21) – 10. Off-Street Parking – Three options are proposed for standards related to off-street parking. Of these, which is your preferred option? Is there an option not proposed that should be considered?

[#10] Development Standards (memo page 21-24) – Are there other items or options listed in Development Standards that you would like to provide feedback on?

[#11] Design Standards (memo page 21-24) – Similar to triplexes and quadplexes, DLCD is still developing its approach to reasonable design standards for townhomes, but is considering two potential approaches:

1. Go through each type of design standard and set upper limits and parameters for what can be required/conditioned.
2. Indicate that the design standards of the model code are a “reasonable” safe harbor for communities, and not try to define parameters.

Which of these two options do you prefer for regulating design of townhomes?

[#12] Other questions or comments:

We remain concerned about proposed reductions in required off-street parking, minimum lot size and density and the impact these will have in established single-family residential neighborhoods. It is conceivable that neighborhood densities may increase to 300% or even 400%. As proposed, the current draft language does not provide flexibility for smaller cities where infrastructure was originally designed and built to an entirely different level of density in single-family residential neighborhoods. It is entirely appropriate to accommodate middle housing in areas that are zoned for single family detached residences, just not all areas. Carrying capacity is a term that planners have used in the past to describe the ability of land to accommodate a certain level of development. Some lands are more suitable than others. In the planning context, carrying capacity was applied most often to environmental resources, but the concept applies to today’s discussions as well – some land is more suitable for a given development than others. Existing neighborhoods are served by infrastructure that was built to a certain capacity, which was usually tied to the original zoning of the land and the expected amount of density at build-out. Under-developed infill areas or greenfields would be more suitable for higher levels of middle housing such as triplexes, quadplexes and cottage clusters. Future infrastructure can be appropriately sized to serve denser levels of development without undermining the carrying capacity of older, existing infrastructure in certain areas of the city.

Submitted by David Martineau, Planning Manager
City of Albany

Ethan Stuckmayer

Oregon Department of Land Conservation and Development

June 10, 2020

Re: HB 2001 LMC Bulk and Scale size requirements in LMCMC

Dear Rulemaking Committee,

We support the work RAC, TAC, DLCD staff and consultants are doing to implement HB 2001 and expand middle housing development opportunities across the state. We submit the following proposed ideas for the Model Code for triplexes and quadplexes, as refinements that we believe will simultaneously improve development feasibility for those housing types and respect local rules on the size, height and placement of buildings in residential zones. Our comments are informed by our collective experience analyzing middle housing development feasibility, developing middle housing, and writing and implementing middle housing development code standards.

We believe that the model code will be most successful by regulating triplexes and quadplexes similarly to single-family detached dwellings in terms of size and bulk allowances. This includes permitting them on as many lots in residential neighborhoods as possible, to improve development feasibility and ultimately, the potential to house as many Oregonians as possible within those neighborhoods. The following comments are offered as revisions to draft code in order to achieve just that outcome, in reference to the draft standards prepared for the Middle Housing TAC Meeting June 1, 2020, and included in the packet for the June 9, 2020, Housing Rulemaking Advisory Committee.

- **Minimum lot size (Chapter 3, Section B.3. of proposed LMCMC code).** *We recommend revising the minimum lot size recommendations to be the same for triplexes and quadplexes as for SF dwellings in the underlying zone, consistent with the duplex minimum lot size model code and minimum compliance standards.* We believe this is essential to maximize the number of lots that would be eligible for plex construction, particularly in infill situations, since lot sizes are generally fixed and can't easily be increased by 25-50% to meet the proposed standard.

The proposed code provision to limit plex size to 2,800 SF on lots meeting the minimum size limit for single-family detached dwellings would become an effective maximum plex size for the majority of existing lots. This would limit feasibility of plex development particularly quadplexes and multi-bedroom units, and unfairly handicap plexes relative to

single-family detached development that would not be subject to similar size restrictions. Concerns about whether plexes would “fit” on minimum size lots should be evaluated through site-by-site evaluation based on the allowed building envelope, rather than preemptively limiting plex construction to a small subset of larger lots.

Further, we believe minimum lot size should not be considered a “siting and design” standard to apply to plexes, consistent with the rationale in Kamps-Hughes III, LUBA No. 2019-115 finding that minimum lot size was not related to siting and design standards for ADUs.

In place of the existing text for minimum lot size, we propose:

The minimum lot size is the same as the minimum lot size for a detached single family dwelling in the same zone.

- **Setbacks (Chapter 3, Section B.6. of proposed LMCMC code).** We support the proposed approach to apply the same setbacks to plexes as to single-family detached dwellings in each zone, including a "maximum maximum" of 20 feet in front and 15 feet in rear. This is important to define the building envelope in a consistent way for both plexes and single-family detached dwellings.
- **Scale/Bulk (Chapter 3, Section B.8. of proposed LMCMC code).** We believe the overall approach to regulating scale and bulk should apply the same standards to plexes as to single-family detached dwellings. The draft code notes that scale and bulk standards are proposed because, “Plexes are more likely to maximize the buildable envelope on the site.” We believe that the buildable envelope should be just that: an envelope for building. The model code and local jurisdictions should focus on defining a buildable envelope that they can live with and that can apply to all types of single-family and middle housing types, rather than singling out and limiting plexes. This may include developing FAR standards for all dwellings, as detailed below, but should be left to individual cities rather than required through the model code.

To achieve parity between dwelling types, we propose to start with minimum compliance language:

Local governments are not required to apply development standards related to scale and bulk to triplexes and quadplexes. However, if the local government chooses to apply scale and bulk development standards to triplexes and quadplexes, it may only apply the same, or less restrictive, clear and objective standards that the local government applies to detached single family structures in the same zone.

This allows cities to regulate scale and bulk of plexes using tools they have already developed: maximum lot or building coverage and/or minimum landscaped area, and FAR in the case of Portland (proposed) and Bend. We believe that is how the duplex model code will apply, that it will allow application of any local lot coverage standards or

similar because it allows cities to apply “all clear and objective development standards that apply to detached single family dwellings in the same zone.” (Chapter 2, Section B.)

If minimum compliance requires cities to only apply standards that are applied to single-family detached dwellings, then the model code should not impose an FAR standard on plexes unless it also applies to single-family detached dwellings. **Instead of the proposed FAR standards, we recommend flexible model code language that ties to existing standards for single-family detached dwellings:**

Triplexes and quadplexes shall be subject to the same scale and bulk standards, including but not limited to maximum lot coverage, minimum landscaped area, FAR, or maximum unit size, that are applicable to detached single family dwellings in the same zone.

We believe that the above is preferable to a Model Code FAR requirement because FAR is used so infrequently in existing codes for residential development, because it would create additional review complexity, and because it would unfairly limit plex development relative to single-family detached dwellings. The only cities that we are aware of that currently use FAR for any residential development at low and medium densities are Portland (proposed) and Bend. For all other cities, new FAR standards in the model code could create duplication or confusion by overlapping with lot coverage and open space standards. Implementing FAR would require new calculations and evaluation steps at permit review, rather than using established tools and methodologies for measuring lot coverage. While these measurements may vary across jurisdictions, they can be applied consistently to all dwellings within a single jurisdiction.

- **FAR.** We recommend that if a city does regulate FAR, that the same standards, or any standard less restrictive, should apply to plexes as to single-family detached dwellings. We recommend that the “Recommended Approaches” for cities to accompany the model code include a FAR module, but--crucially--we think FAR will only be successful if it applies to single-family detached dwellings as well as plexes. Further, we would support a tiered FAR approach like Portland has proposed that rewards plex development with additional FAR for development of more units, to better incent middle housing development.

If the RAC decides to move forward with FAR requirements for plexes in the model code or incorporate into the recommended approaches, **we recommend a maximum FAR of 1.0 for all plexes, or tiered FARs tied to minimum lot size as follows.**

<i>Minimum Lot Size in Zone</i>	<i>Maximum FAR</i>
<i>Less than 3,000 sf</i>	<i>1.4</i>
<i>3,000 sf or more but less than 5,000 sf</i>	<i>1.1</i>

<i>5,000 sf or more but less than 10,000 sf</i>	<i>0.9</i>
<i>10,000 sf or more</i>	<i>0.5</i>

However, please note that capping FAR at *any* number runs the risk that the maximum size for a triplex could be *smaller* than the maximum size for a single-family home on the same lot – which would violate the proposed minimum compliance standard and, we believe, the spirit of HB 2001. This potential for internal inconsistency can and should be avoided – by not establishing maximum FARs at all.

Thank you for your consideration as you continue your important and timely work developing the model code.

Sincerely,

Elizabeth Decker, JET Planning LLC

Neil Heller, Neighborhood Workshop

Kol Peterson, Accessory Dwelling Strategies (Housing Rulemaking Advisory Committee)

Eli Spevak, Orange Splot LLC



jenningslodgpecpo@gmail.com

June 11, 2020

RE: Oregon House Bill 2001 – Middle Housing

Dear Ethan Stuckmayer, Oregon Department of Land Conservation and Development:

Residents in unincorporated Jennings Lodge, Clackamas County, are concerned about several urban services issues to be impacted by House Bill 2001 and how they might negatively effect Jennings Lodge. The Jennings Lodge Community Planning Organization voted at its regular May 26, 2020 meeting to send letters to those agencies who may have a role in determining how those issues are approached in implementing the Bill, which includes Department of Land Conservation and Development, Clackamas County, and Oak Lodge Water Services District.

HB 2001 says middle housing requirements don't apply to lands that are not incorporated and also lack sufficient urban services. (The ORS 195.065 cited in the Bill says these services are Sewers; Water; Fire Protection; Parks; Open Space; Recreation; and Streets, Roads and Mass Transit.)

Definitions of sufficient vs. deficient urban services have yet to be clarified.

We understand from Department of Land Conservation and Development staff and ORS **195.065** that each county within an urban growth boundary shall negotiate with service providers responsible for urban services within the county to negotiate urban service agreements. We have queried Clackamas County, and Oak Lodge Water Services which is responsible for our sewer and surface water quality – The surface water systems in the Oak Lodge District is owned by Clackamas County. We are concerned the question of sufficient urban services is being addressed by those agencies, as there are deficiencies now, which the community has repeatedly called to their attention over many years. We also understand that Oak Lodge Water Services does not have data to determine what the demand would be for their services if/when HB 2001 is implemented, and no way to project what remedies might be needed.

The Jennings Lodge Community Planning Organization requests copies of all Clackamas County urban services agreements affecting Jennings Lodge residents in unincorporated Clackamas County, including Oak Lodge Water Services District, North Clackamas Parks & Recreation District, and agreements relating to streets, roads, the mass transit and metropolitan service district.

Once sufficient vs. deficient urban services are fully defined for current density, and for HB 2001 intended growth levels, who will pay for fixing deficiencies in storm drainage, transportation services, parks, recreation, open space, and mass transit?

HB 2001 lets local governments ask for an extension on implementing the middle housing requirements, for areas where water, sewer, storm drainage or transportation services are significantly deficient; and for which the local government has a plan to remedy those deficiencies. As just one example of deficiencies in Jennings Lodge, streets and yards flood regularly after a big rainstorm, because we already have deficient storm water

drainage (there *is* no sufficient public storm drainage management system), which could only increase with added development.

Both the State and Clackamas County have deemed Jennings Lodge to be an area with high concentrations of low-income populations. While it would be very valuable to have our significantly deficient urban services remedied , people in Jennings Lodge are concerned that steps taken to remedy those deficiencies for future development would put untenable financial consequences burdens on Jennings Lodge property owners, rate payers, and residents.

We wish to make known our concerns that any steps taken to fix deficiencies will require significant added financial burdens on current property owners and residents due to anticipated future development.

For our community,

Jane Morrison, Chair,
Jennings Lodge CPO

CC: Kevin Williams, Oak Lodge Water Services District
Chair Jim Bernard; Gary Schmidt, Clackamas County Administrator; NCPRD



June 15, 2020

Ethan Stuckmayer
Oregon Department of Land Conservation and Development
635 Capitol Street NE #150
Salem, OR 97301

Dear Ethan Stuckmayer:

The Department of Land Conservation and Development (DLCD) is in the rulemaking process for House Bill 2001, which requires cities to allow middle housing (duplexes, triplexes, quadplexes, townhomes and cottage clusters) in areas zoned for residential use. In the latest Rulemaking Advisory Committee packet, DLCD staff proposed two approaches to define "areas" in which local jurisdictions must allow triplexes, quadplexes, townhomes and cottage clusters.

Local governments have expressed the need for more flexibility to implement the law considering local context while ensuring that cities and counties implement HB2001 and satisfy its intent to provide more housing choice for community members. This should explicitly promote fair housing outcomes that increase racial equity and reduce segregation based on race, ethnicity and income.

This letter includes ways to provide that increased flexibility for local jurisdictions while allowing DLCD to evaluate whether cities and counties are complying with the law and ensure compliance.

The following approaches are conceptual. They would require additional work to improve the language and possibly in some cases find specific measures that would help achieve the desired outcome and work in multiple communities. The approaches do not consider duplexes because that housing type must be required on every lot rather than in "areas."

Three options are described below, with the intention of showing a range of approaches and informing the work of DLCD staff and its consultants as well as discussions at the Rulemaking Advisory Committee and Technical Advisory Committee related to this topic.

Minimum compliance options (for everything but duplexes)

Option A: One guideline

Conceptual OAR language (draft)	Commentary to describe intent or clarify language
1. Local jurisdictions shall establish boundaries that define areas and, within those areas, shall allow all middle housing types consistent with HB2001 in a manner that significantly and broadly allows middle housing, promotes racial equity through housing opportunity and provides the opportunity for added housing types to reduce segregation by race, ethnicity and income. The areas defined shall cumulatively include all land zoned for residential use.	This is an attempt at a shorter statement that provides a lot of flexibility and discretion. This leaves a lot of discretion with DLCD and may produce more disagreements about whether a jurisdiction has approved rules that are consistent with the minimum compliance.

Option B: Specific but non-numeric guidelines

Conceptual OAR language (draft)	Commentary to describe intent or clarify language
1. Local jurisdictions shall establish boundaries that define areas. The areas defined shall cumulatively include all land zoned for residential use.	Boundaries can be zones, land use districts, Comprehensive Plan designations, development pattern areas or any other geographical solution jurisdictions develop to comply with HB2001 consistent with local context. The boundaries that establish these areas can be established by the local jurisdiction but must cover every lot that meets the definition for "zoned for residential use," which is a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan designation.
2. Local jurisdictions' standards shall allow all middle housing types within each area designated within a jurisdiction. Local jurisdictions may allow middle housing types on all lots but are not required to allow them on all lots.	This furthers the intent of HB2001 by ensuring that triplexes, quadplexes, townhomes and cottage clusters are allowed within each area. Local jurisdictions may choose to allow more of one type than the other, but all must be present within the area.
3. Local jurisdictions shall develop standards related to middle housing within each area that shall, as applied, allow: a) Significant development of middle housing types within each defined area. This means the regulations as applied need to allow significant development with the existing lot pattern. b) Significant development of middle housing types within low-poverty sub-areas within each area (or perhaps another measure, such as any subarea with housing values greater than median.)	This provides expectations that DLCD can use to evaluate whether a jurisdiction is successfully and equitably allowing middle housing types. a) When a jurisdiction establishes rules, they must meet the "significant" test, meaning that allowing housing types on one lot is not enough because that is not a significant amount of allowance. This approach does not set a percentage. The language also clarified that rules as applied need to allow, meaning a jurisdiction cannot say they allow the housing types everywhere but have development or design standards that effectively prohibit them. b) This language seeks to ensure that high-income areas or subareas within the "areas" cities define are not entirely excluded from middle housing types. Wealthy neighborhoods cannot be entirely exempt. Caveats: This language is a placeholder and some work could be done to identify the best measure to use to ensure high-wealth areas are not excluded from the reach of HB2001. In

Conceptual OAR language (draft)**Commentary to describe intent or clarify language**

	addition, this section should probably say that significant allowances are not required if exemptions are allowed elsewhere in the minimum compliance, such as exemptions for Goal-protected areas.
4. All jurisdictions shall demonstrate through findings how regulations will comply with the provisions above and promote the opportunity for additional housing types to promote increased racial equity and reduced segregation by race, ethnicity and income.	Call for findings to consider equity so DLCD can evaluate how the jurisdiction analyzed and addressed equity when creating its regulations. This can inform DLCD's judgment about whether a jurisdiction met the expectations above.

Option C: Specific and numeric guidelines

Conceptual OAR language (draft)	Commentary to describe intent or clarify language
1. Local jurisdictions shall establish boundaries that define areas. The areas defined shall cumulatively include all land zoned for residential use.	Boundaries can be zones, land use districts, Comprehensive Plan designations, development pattern areas or any other geographical solution jurisdictions develop to comply with HB2001 consistent with local context. The boundaries that establish these areas can be established by the local jurisdiction but must cover every lot that meets the definition for "zoned for residential use," which is a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan designation.
2. Local jurisdictions' standards shall allow all middle housing types within each area designated within a jurisdiction. Local jurisdictions may allow middle housing types on all lots but are not required to allow them on all lots.	This furthers the intent of HB2001 by ensuring that triplexes, quadplexes, townhomes and cottage clusters are allowed within each area. Local jurisdictions may choose to allow more of one type than the other, but all must be present within the area.
3. Local jurisdictions shall develop standards related to middle housing within each area that shall, as applied, allow: a) Middle housing in each area consistent with: i. A minimum percentage of lots within each area, specifically: 1. Triplexes and quadplexes: 25 percent; and 2. Townhomes: 10 percent; and 3. Cottage clusters: 100 percent of lots that are greater than 10,000 square feet; or ii. Percentages lower than those specified in (i) above approved by DLCD because of natural, physical or hazardous conditions. The percentage reduction shall be the minimum amount needed to address the constraint. The jurisdiction shall make findings for each housing type.	This provides expectations that DLCD can use to evaluate whether a jurisdiction is successfully and equitably allowing middle housing types. It allows two paths. A clear and objective path with numerical percentages to meet. These percentage are placeholders. Additional analysis would be required to identify reasonable percentages that increase the potential for middle housing while allowing cities flexibility to implement the code in a way that works for the context. For reference, in Beaverton a couple of the options presented by DLCD would not allow triplexes and duplexes on most lots in Beaverton's R7 zone, which has a maximum density of 6.2 units per acre and requires 7,000 square feet of land per home. • If minimum lot size were 125 percent of the 7,000-square-foot minimum lot size for triplexes: 37 percent of lots R7 lots. • If minimum density were 150 percent of the 7,000-square-foot minimum lot size for triplexes: 19 percent of all R7 lots.

Conceptual OAR language (draft)**Commentary to describe intent or clarify language**

b) Significant development of middle housing types within low-poverty subareas within each area (or perhaps another measure, such as any subarea with housing values greater than median), in a manner that increases racial equity and reduces segregation by race, ethnicity and income.	b) This language remains because it is important that middle housing types be allowed broadly rather than being excluded from some areas, such as in response to neighborhood opposition.
--	---

4. All jurisdictions shall demonstrate through findings how regulations will comply with the provisions above and promote the opportunity for additional housing types to promote increased racial equity and reduced segregation by race, ethnicity and income.	Call for findings to consider equity so DLCD can evaluate how the jurisdiction analyzed and addressed racial equity when creating its regulations. This can inform DLCD's judgment about whether a jurisdiction met the expectations above.
--	---

I appreciate DLCD staff's work and staff's willingness to listen and incorporate comments from stakeholders. I would like to request that you share this letter with DLCD staff, Rulemaking Advisory Committee members and Technical Advisory Committee members, and I hope these ideas inform future DLCD staff work and RAC and TAC discussions.

Sincerely,

Brian Martin, Long Range Planning Manager
Community Development Department
City of Beaverton



June 15, 2020

Ethan Stuckmayer
Senior Planner of Housing Programs
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Ste. 150
Salem, OR 97301

Re: HB 2001 Large Cities Townhome Model Code and Minimum Standards

Dear Ethan,

Thank you for the opportunity to meet with your team and to submit the following comments on the proposed townhome model code and minimum standards for large and Metro cities, dated May 26, 2020. The Oregon Home Builders Association (OHBA) worked with Speaker Kotek to include townhomes and cottage clusters in HB 2001 to expand middle housing homeownership opportunities in neighborhoods that have been exclusively detached single family residential. To help builders increase the supply of this housing type in a timely and affordable manner, we ask your team to find ways to reduce townhome development complexities and regulations in this draft rule.

Chapter 4, Section A – Permitted Uses and Approval Process

The intent for including townhomes and cottage clusters under the umbrella of middle housing was to acknowledge the need to streamline processes or develop a new process to allow for simple land divisions. The only difference between building an attached duplex, triplex or quadplex and a townhouse under HB 2001 is the ownership structure. There is no additional demand on infrastructure. A streamlined land division process should be considered for certain infill lots or parcels that are divided into four lots or less.

Chapter 4, Section B – Development Standards and Section C – Design Standards

In general, the consumer should determine design standards. An exception would be the application of design standards in locally adopted historic neighborhoods. Our recommendation for townhome regulations, regardless of the neighborhood, are summarized in the attached table. To maximize housing affordability, we have removed several sections from the proposed chapter.

The proposed townhouse rules should prohibit local jurisdiction regulation of the following:

- B.5 Minimum lot frontage - This issue is covered through local regulations around creating legal, developable lots. Importantly, for many Planned Unit Development projects, many units have no frontage.
- B.9 Floor Area Ratios - Due to small lot sizes, townhome size and massing is best managed through setbacks and height regulations, which are included in the model code. Additionally, the use of FAR will increase application complexity, which will drive up the cost of reviewing and processing applications.
- B.11 Open space/landscaping standards - Open space requirements will effectively prohibit the development of townhomes. As attached single family units, they should not be required to include open space, which is more applicable to multifamily housing. Due to small lot sizes, open space is best managed through setbacks regulations, which are included in the development standards.
- B.12 Areas in common – A shared ownership structure of the common area, for the purpose of maintenance, adds cost and complexity to a townhouse project.
- C.2 Unit definition – Required balconies, porches, recessed entries, frontage offsets, etc. add unreasonable cost to building townhomes.

We have summarized our recommendations for the remaining model code and minimum standards sections of Chapter 4, Townhouses, in the enclosed table. For reference, we have used the same section numbers as the May 26, 2020 draft.

Thank you again for your time and consideration. We look forward to having an in-depth conversation about townhomes and cottage clusters at the next Technical Advisory Committee meeting.

Sincerely,



Ellen L. Miller
Government Affairs Director
Oregon Home Builders Association

Cc: Kevin Young, Sean Edging, Robert Mansillo, DLCD

Attachment



Exhibit 1 – OHBA Recommendations for Townhouse development and design standards

Standard	Model Code	Minimum Compliance
B. Development Standards		
B.2. <u>Number of Units.</u>	Minimum: A townhouse project must contain at least two (2) units. Maximum: There is no maximum number of consecutively attached units per townhouse structure.	Local governments must require at least two attached townhouse units and must allow up to four attached townhouse units. Local governments may not prohibit less than ten attached units in a townhome project.
B.3. <u>Minimum Lot Size.</u>	No requirement	A minimum lot size is not required. However, if a jurisdiction applies a minimum lot size it must be no more than the minimum lot size for a detached single family dwelling in the same zone.
B.4. <u>Minimum Lot Width.</u>	No requirement	A minimum lot width is not required. However, if a jurisdiction applies a minimum lot size it must be no more than the minimum lot width for a detached single family dwelling in the same zone or fifteen (15) feet, whichever is smaller.

Standard	Model Code	Minimum Compliance
<u>B.6. Maximum Density.</u>	No requirement. Townhomes consist of a single dwelling unit per lot. For the purpose of this definition, an ADU shall not count as a dwelling unit.	Maximum density is not required. Local jurisdictions may regulate maximum density by minimum lot size.
<u>B.7. Setbacks.</u>	Townhouses shall be subject to the following minimum and maximum setbacks: • Front: The same minimum setback as applicable to detached single family dwellings in the same zone. Minimum front setbacks greater than 20 feet are invalid, except those applicable to garages or carports. • Rear: The same minimum setback as applicable to detached single family dwellings in the same zone, except minimum rear setbacks greater than fifteen (15) feet are invalid. • Street Side: The same minimum setback as applicable to detached single family dwellings in the same zone, except minimum street side yard setbacks greater than twenty (20) feet are invalid. • Interior Side: ○ The setback for a common wall lot line where units are attached is zero (0) feet. ○ The setback at the end of a townhouse structure is five (5) feet.	Same as Model Code.

Standard	Model Code	Minimum Compliance
<u>B.8. Height.</u>	A townhouse may include a third story in areas not otherwise prohibited by Goal 15: Willamette River Greenway or Goal 5: historic resource protections.	Local governments' height standards must allow construction of at least two stories.
<u>B.10. Off-street Parking.</u>	Off-street parking is neither required nor prohibited.	A local government may not require more than one off-street parking space per townhouse unit. Local jurisdiction may not prohibit off-street parking.
<u>C. Design Standards</u>		
<u>C. 1. Entry Orientation.</u>	No requirement.	Local jurisdiction may require the main entrance of each townhouse to face a street property line, an alley, or common open space. If a townhouse has more than one street property line, the entrance may face either street.
<u>C.3. Windows.</u>	A minimum of 15 percent of the area of all street-facing facades on each individual unit must include windows or entrance doors. Window area is the aggregate area of the glass within each window, including any interior grids, mullions, or transoms (<i>Consider adding window area and door area to the definitions section so the same calculation applies to other middle housing types</i>). Door area is the area of the portion of a door other than a garage door that moves and does not include the frame. Window area in the door of an attached garage may count toward meeting this standard.	Local jurisdictions may not require more than 20 percent of all the street-facing facades on each individual unit including windows or entrance doors. Window area is the aggregate area of the glass within each window, including any interior grids, mullions, or transoms. Door area is the area of the portion of a door other than a garage door that moves and does not include the frame. Window area in the door of an attached garage may count toward meeting this standard.

Standard	Model Code	Minimum Compliance
<u>C.4. Driveway Access and Parking.</u>	No requirement.	Local jurisdictions may not require rear access alleys.

MEMORANDUM

From: Edward J. Sullivan
To: Ethan Stuckmayer, DLCD
Date: June 16, 2020
Subject: HPS Strategies

In the HPSTAC Meeting #5 materials, there was a worksheet that, *inter alia*, asked for comments on various strategies. I met with a number of other housing advocates and came up with some comments that I was asked to bring forward. I do not represent that all of these comments reflect everyone's views, but I am copying those persons and others so that they may indicate other positions to you.

Where I do not comment, it is either because I agree with the strategy or am not competent to evaluate the effectiveness of the strategy. Using the list you provided at https://docs.google.com/document/d/1wg091os-MPyOML3TYtKu01895xsi47ZMVOhp_18Am8E/ I provide the following comments:

Zoning and Code Changes

A1 Ensure Land Zoned for Higher Density is not Developed at Lower Densities – Generally, we agree and note that Metro and some other local governments use a minimum density policy. To prevent “underbuilding,” this should be a presumptive policy, so that any deviation to 10% less than maximum density without an adequate explanation based on other legitimate considerations, such as topography or other physical limitation, protections imposed by other statewide planning goals, or the like is presumptively invalid and may be tested on appeal. Additionally, FHCO created a checklist of code revisions to be considered. I attach that list to this memo.

A2 Zoning Changes to Facilitate the Use of Lower-Cost Housing Types -- If state law or the local plan allows these types, this should be presumptively approvable.

A4 Housing Rehabilitation Codes – There was a case in Minnesota that almost got to the US Supreme Court in which landlords of older housing stock argued that rigorous enforcement of housing codes led to destruction of that housing stock and gentrification. Health and safety must be preserved, but don't let the perfect be the enemy of the good.

A5 Code Provisions for ADUs – Aside from the attempts to circumvent statutory allowance of these housing units by cities such as Eugene, conversion of ADUs (and houses and multifamily units) to commercial short-term rentals must be regulated as part of an effective housing program. (See A9, below) These uses are already presumptively approved by statute with respect to urban areas that are zoned for detached single-family dwellings.

A6 and A7 Broaden the Definition of Housing Type and Allow for Single Room Occupancy in Residential Zones – This broadening, which is not required under HB 2001, should include homeless shelters as well. I recommend plan provisions governing these uses so that they may be implemented by land use regulations more easily.

A9 Short-Term Rentals Regulations – Many short-term rental “facilitators” do not willingly disclose their clients, so that there is a high rate of noncompliance with local regulations. Requirements to share that information, coupled with penalties that may be levied against both the renter (perhaps with a “three strikes” policy) and the facilitator should be used as part of ADU housing availability. Assessing and taxing commercial uses should also be considered. If a local government is not regulating short-term rentals, its housing program is deficiency.

A10 Inclusionary Zoning – I fear that the US Supreme Court may find these programs to be a “taking” if they are imposed without some offsetting benefits.

A11 Add Restrictive Covenants to Ensure Affordability – That’s great, but how do you do that? Do you include the requirement as part of the land use approval? Is it an offsetting benefit for an increase in density? Here’s a variation on this tool – Are there grounds to go after existing covenants that are contrary to public policy – such as large lots in areas that need more dense housing? If not, do you condemn them? Moreover, there is the question of enforcement – Portland failed to enforce affordable housing in the South Waterfront Area -- https://www.oregonlive.com/portland/2010/06/portland_leaves_empty_promises.html. The state failed to enforce LIHTC (Low Income Housing Tax Credits) in Rose City Village. <https://www.nhlp.org/wp-content/uploads/State-Court-Invalidates-Decision-to-Release-Property-from-LIHTC-Program-for-Noncompliance-42-Hous.-L.-Bull.-9-Jan.-2012.pdf>. Just because you have an obligation does not mean it will be carried out. Monitoring and enforcement are necessary if these techniques be used.

A13 FAR and Density Transfer Provisions – Monitoring and enforcement are necessary here too.

A19 Community Benefits Districts – As a practical matter, these are useful only in larger cities that can calculate needs and public benefits. A tax on profits is not impossible and can be an increment on the increased value of the land and improvements attributable to the development approval.

A20 High Density Requirements for To-Be-Annexed Land – While annexations may no longer subject to voter approval, that does not prevent a city from making a deal with the landowner to provide benefits in the form of public works in exchange for greater density and the like.

B2 Remove Development Code Impediments for Conversions -- A comparison of the Model Codes to be used for medium and large cities should be a point of comparison. What are the extra items imposed by local codes over and above the state minimums? What are the reasons for keeping them? Are there building code impediments (following the building code revisions required by HB 2001) that should be revised.

B3 Expediting Permitting for Needed Housing Types – I have some concerns here. For some projects, the timeline is 100 days and for the rest it is 120 days. There is a certain amount of noticing, coordination, and review that accompanies the exercise of discretion. If there is no discretion involved, there’s no timeline problem.

B5 Reduce Regulatory Barriers to Lot Division – Subdivisions and Partitions involve public service and facility, transportation issues and the like that do not lend themselves to a non-discretionary process. That is why they are limited land use decisions under ORS 197.195, which joins a more limited process for the exercise of discretion. In any event, no developer can walk into a planning department and demand approval of a land division at the counter. I fail to see what is wrong with the current process.

C1 and C3 Reduce or Exempt SDCs for Needed Housing and Reduce or Exempt SDCs for ADUs – Someone has to pay the costs of improvements funded by SDCs. Other property owners cannot be made to subsidize development of their neighbors. Unless the local government picks up the tab (from its general fund or from housing funds appropriated for that purpose), the improvements will not be adequately funded. There is no free ride.

C2 Modify SDC Fee Schedules – There should already be different schedules for single-family and multi-family housing, due to the different intensities of use to public facilities. You might encourage additional categories for duplexes, triplexes etc. The use of square footage might work, but may be better if joined with use of different categories of residential use. Remember also that a square footage metric may result in the owner or renter of a large residence paying less than the owner of a smaller residence in the same category.

C5 and C6 Waive or Finance Park Impact Fees for Affordable Housing and Publicly Funded Infrastructure Improvements – See responses to C1 and C3, above.

C7 Reconsider Applying Park SDCs (to Affordable Housing Projects) – The justification for this suggestion is as follows:

If there are appropriate levels of parks and open spaces near the project, these impact fees should not be charged or should be assessed at a much lower rate. They are not general funds to be allocated without a nexus to the development.

Lots of people can use various excuses to get out of SDC charges if this kind of thinking prevails. We have viable SDC schemes that apply across the board and do not have differential fees depending on how much one uses a facility or how close they are to the same. Don't undermine the SDC fee system with this kind of special pleading.

I did not respond to the tax categories (D and E).

I hope these comments are helpful.

From: [Andree Tremoulet](#)
To: [TRAVIS Kim * HCS](#); [Stuckmayer, Ethan](#); [Young, Kevin](#); [Garcia, Samuel](#); [Edging, Sean](#)
Cc: ["Allan Lazo"](#); ["Kirsten Blume"](#); ["Louise Dix"](#); ["Marisa Zapata"](#); ["Jean Dahlquist"](#); [Stephanie.A.Jennings@ci.eugene.or.us](#); ["Ed Sullivan"](#); ["Deb Meihoff | Communitas"](#); ["Mary Kyle McCurdy"](#); ["Jennifer Bragar"](#); ["Taylor Smiley Wolfe"](#)
Subject: Potential data sources for Mid-Term reports
Date: Thursday, June 18, 2020 1:40:20 PM
Attachments: [Costar Market Report for Columbia County, 2015-20.pdf](#)

Greetings---

During today's meeting, we discussed data sources for the Housing Production Strategy midpoint report that might get at tenure and affordability levels of housing produced (thanks, Stephanie, for your suggestions!). I suggested investigating commercially available sources potential subscriptions so that the state could provide data to jurisdictions. **This email is to introduce Jean Dalquist, whom I think could help you investigate some of these data sources**---at least point you in the right direction and maybe generate some sample reports. Jean has been doing work currently for Housing Land Advocates as well as working on projects for Fair Housing Council of Oregon.

Cities will be providing data on the housing produced by unit type on an annual basis in their HB 4006 report. It would be useful to learn more about the affordability levels (rents, sales values) and tenure of the housing produced. **Jean identified three commercial services that could help provide that information for at least a sample of the units produced---Redfin, Zillow and COSTAR.**

As an example, I asked Jean to see if she could figure out the rent levels of new rental properties in Columbia County that entered the market between 2015 and 2020. She knew to look at COSTAR. Within a couple of minutes, she had set her search parameters and generated the attached report. The report has detailed information on rents, vacancy rates, anticipated changes in rents, etc. on two properties in the database that met those parameters.

Jean indicated that it is also possible to create automated dashboard reports that generate aggregated data at specified intervals for specified geographies. In other words, **it may be possible to automatically generate dashboard reports on housing produced, rent levels and sales prices for the HB 2003 cities (or the counties in which they are located) on a regular basis and send those reports to those cities.** It would be up to the cities to review the data and build on it to help address reporting questions about tenure and affordability.

Jean can speak to the data sources that companies like COSTAR use, and how complete or incomplete they might be for your purposes. I am guessing that they deal primarily with unregulated/not subsidized housing, which is great, because you already have state data sources for new subsidized rental housing produced and offers to report on new land trust and Habitat for-sale housing produced.

I chose to ask Jean to generate a report on rental housing because it is notoriously harder to get this data than data for owner-occupied housing. Data for owner-occupied housing is available, too.

Jean (IMHO) is an unusually capable student pursuing a joint degree in planning and real estate at

PSU. She has a passion for data. When I asked her what faculty member is particularly talented in navigating commercial real estate data sources, she identified Julia Freybote <https://www.pdx.edu/sba/julia-freybote> .

I hope that you will consider contacting Jean, who has access to these sources through PSU. After investigating the possibilities, I hope you also consider (perhaps jointly for OHCS and DLCD) purchasing a subscription to the most appropriate services---or even investigating whether an existing state agency already has subscriptions.

Thanks for considering this possibility.

Andrée

Andrée Tremoulet, PhD
Commonworks Consulting
www.commonworksconsulting.com
503.267.9255
Pronouns: she/her/hers ([learn more](#))



|



Date: May 21, 2020
To: Ethan Stuckmayer, Senior Housing Planner, DLCD
From: Andrée Tremoulet
CC: Samuel De Perio Garcia and Sean Edging, DLCD
Subject: Response to HPSTAC Meeting Packet 5

Thank you for the hard listening and hard work that the DLCD team invested in integrating fair and equitable housing concerns in the most recent draft of the Housing Production Strategy Report requirements and guidance. The attached responses to HPSTAC #5 Discussion Worksheet questions are further refinements that principally touch on the following topics:

- Requiring cities to identify the housing classifications by tenure, affordability, and housing type that they intend to focus on in their strategies.
- Encouraging cities with Consolidated Plans or an Analysis of Impediments/Fair Housing Plan to incorporate resources and actions from these plans in their responses, thus encouraging dialogue and coordination between land use/long range planners and those managing federal housing resources within cities.
- Recommending that staff continue to refine the five questions and get additional input from communities of color and suggesting that gentrification be included for cities where it is a factor.
- Recommending that staff further consider the benefits of incorporating elements of a “fair share” approach to calculating the number of houseless households to avoid encouraging cities that have few houseless households due to a meager service network and strict enforcement of nuisance ordinances to continue those practices.

Thank you for your consideration of these ideas.

Response to HPSTAC Meeting 5 Questions

Submitted by Andrée Tremoulet

June 21, 2020

HPSTAC Question 2—Data Points

[#2] Structure of Housing Production Strategy Report - After reviewing the pathway to incorporate equity considerations and homelessness data into the HPS Report, are there any further data points and/or considerations that you feel should be added or re-organized to better reflect minimum compliance and proposed guidance that jurisdictions will need to abide by?

- Contextualized Housing Need Section: As a required element, I suggest asking cities to take the final step of identifying which kinds of housing will receive priority attention in their housing strategies. This could be done by tenure/affordability or by housing type, or both ways. Using the affordability levels that appear in DLCD's list of strategies and the HB 4006 reporting tool housing types, I'd like to offer an approach to accomplishing this as follows:

Step 1: Housing Priorities by Affordability and Tenure: Use the chart below to indicate which categories of housing by tenure and affordability level will be the focus of your city's housing production strategies. Rank each High, Medium or Low Priority.

	For Rent	For Sale
Homeless (Permanent Supportive Housing)		
Publicly Subsidized 0 - 30% MFI		
Affordable 30 – 80% MFI		
Workforce 80 – 120% MFI		
Market More than 120% MFI		

Step 2: Housing Priorities by Housing Type: Use the chart below to indicate which housing types will be the focus of your city's housing production strategies. Rank each High, Medium or Low Priority. *[Note to DLCD Staff: ECONorthwest has a graphic that they use to link affordability and tenure to housing types. It might be useful to contact ECONorthwest to ask if the State could use it, with proper attribution, to help planners link the table above to the table below.]*

	For Rent	For Sale
Single-family detached		
Single-family attached		
Duplex		
Accessory Dwelling Units		
Manufactured Homes		
Triplex or fourplex		
Five or more units		

- Contextualized Housing Need Section: Please ensure that the data on Percentage of Rent Burdened Households to be provided by Oregon Housing and Community Services is broken out by race, ethnicity, and disability. The reason this is important is to analyze the degree to which disproportionate housing need is experienced by “protected classes” under Fair Housing. This analysis will help determine if there is a nexus between rent-burdened and race, ethnicity, and disability. If there is a nexus, then the city’s efforts to support the construction of housing to meet the needs of rent-burdened or homeless households could contribute to Affirmatively Furthering Fair Housing. Conversely, if the city does not at least adopt tools, policies and other measures to promote the development of housing for this population, then this lack of effort could represent a failure to affirmatively further Fair Housing.

If the data OHCS provides does not break out the Rent Burdened Households data by race, ethnicity, and disability, then require the city to undertake this analysis, using the Census measure of Households in Poverty as a proxy for Rent Burdened Households, as I suggested in my responses to HPSTAC Meeting Package #4.

- Contextualized Housing Need Section: Please clarify that the socio-economic and demographic trends will include both race and ethnicity.
- Contextualized Housing Need Section: Please consider further whether including consideration of a proportionate share of regional or state homeless counts should be part of the calculation of homeless households for each city. Here’s the reasoning: Let’s say City A provides a robust array of services for people without permanent housing. Let’s say City B, adjacent to or near City A, has not invested in a network of services for people without permanent housing, thus it is very poor, and the city is also known to be a strict enforcer of nuisance codes that actively discourage people without permanent housing from living there. It is probable that more people without permanent housing would choose to live in City A. If we just use the city counts of homeless as the basis for projecting need, then we risk perpetuating the status quo and not putting any pressure on City B to accommodate this population. While I don’t have a particular methodology to suggest (this is not my areas of expertise), I do think that the experts should discuss this issue further.
- Strategies Section: Currently, under Magnitude of Impact, cities are required to discuss (a) the housing need fulfilled by each strategy, (b) the number of housing units that may be created by that strategy, (c) the benefits and burdens created by the strategy for specified groups, and (d) the time frame for the adoption of the strategy. Instead of asking cities to respond to items (a) and (b) by strategy, I suggest that DLCD ask them to organize their response by housing type. It may be advisable to continue to ask cities to respond to (c) and (d) by strategy.

The tables below provide a method for reporting (a) and (b) by housing group and mirror the tables I suggested for the Contextualized Housing Need Section:

Magnitude of Impact of Proposed Strategies Collectively on Housing Need

Estimate the number of housing units that may be created in the next six to eight years and identify the housing strategies your city will use to foster their development. Use a reference number or letter to refer to the strategies in your list.

	Housing for Rent		Housing for Sale	
	Target # of units to be added	Strategies	Target # of units to be added	Strategies
Homeless (Permanent Supportive Housing)				
Publicly Subsidized 0 - 30% MFI				
Affordable 30 – 80% MFI				
Workforce 80 – 120% MFI				
Market More than 120% MFI				

	Housing for Rent		Housing for Sale	
	Target # of units to be added	Strategies	Target # of units to be added	Strategies
Total Housing Units				
Single-family detached				
Single-family attached				
Duplex				
Accessory Dwelling Units				
Manufactured Homes				
Total Single-Family HU				
Triplex or fourplex				
Five or more units				
Total Multifamily HU				

Under the Proposed Guidance column for this section, jurisdictions that have their own Consolidated Plans or Analysis of Impediments/Fair Housing Plans should be encouraged to incorporate actions and investments from these plans in their responses. The jurisdictions with these plans include:

- 14 cities: Albany, Ashland, Beaverton, Bend, Corvallis, Eugene, Grants Pass, Gresham, Hillsboro, Medford, Portland, Redmond, Salem, Springfield
 - 3 counties: Clackamas, Multnomah, and Washington
- New section on Achieving Fair and Equitable Housing Outcomes: First, bravo for including this new section. These are good questions, and I hope cities answer them succinctly and directly.

Second, I agree that more discussion should occur about “Opportunity Areas,” including whether the reference should be to the OHCS-identified areas or whether cities might address this question differently.

Third, it may be useful to ask cities to address gentrification/displacement issues in this section if they are issues locally.

With those caveats and comments, I'd like to offer for further discussion the following version of "The Five Questions":

- Opportunity Areas: How is your jurisdiction creating opportunities for households of color and low-income households to live in high opportunity areas, which include areas with a healthy environment, good schools, frequently used businesses, services, community institutions and public amenities, and with convenient access to transportation networks and jobs? This could include improvements to lower-income areas/areas with concentrations of communities of color as well as locating new lower-cost/subsidized housing in high opportunity areas.
- If gentrification or displacement are issues in your city, what is your city doing to enable existing residents and communities to remain in areas with rising real estate values and enhanced public amenities? What are you doing to ensure that their needs are addressed in the new investments?
- Fair Housing---same as current draft
- Homelessness/equitable distribution of services---same current draft
- Opportunities for affordable rental housing and homeownership---same as current draft

Under the Proposed Guidance column for this section, jurisdictions that have their own Consolidated Plans or Analysis of Impediments/Fair Housing Plans should be encouraged to incorporate actions and investments from these plans in the responses to these questions. The affected communities are:

- 14 cities: Albany, Ashland, Beaverton, Bend, Corvallis, Eugene, Grants Pass, Gresham, Hillsboro, Medford, Portland, Redmond, Salem, Springfield
- 3 counties: Clackamas, Multnomah and Washington

HPSTAC Question 3

[#3] Housing Production Strategy Tools - A list of tools/actions/policies that a city may implement to facilitate the production of housing is being compiled at this link: https://docs.google.com/document/d/1wg091os-MPyOML3TYtKu01895xsi47ZMVOhp_18Am8E/edit. Please share this list widely with your networks. The goal is to provide as many possible housing production strategies as possible for future reference as cities begin adopting Housing Production Strategies. This list of strategies will be included in a DLCD guidance document published after rulemaking has concluded. What specific tools/actions/policies should be added to this list?

Thank you for investing time and effort into identifying the affordability levels and tenure of housing likely to be impacted by the tools/actions/policies. I look forward to reviewing and commenting online. But, for now, I wanted to recognize the effort.

HPSTAC Question 5

[#5] Fair and Equitable Housing Midpoint Review - In addition reporting on the strategies a city has implemented or not implemented by the midpoint of the Housing Production Strategy period, cities should reflect on progress made with regards to achieving fair and equitable outcomes. Do you believe the 5 questions listed above are the right questions to be asking midpoint? If not, what other questions do you propose? Or, identify another method the department could deploy to address these outcomes.

- Please revise to include the five questions once a new version is available.
- Cities should also report on the housing that has been produced. On page 37 of the HPSTAC #5 meeting packet, staff says that jurisdictions will also be required to report on “how many units of each tenure and affordability level were produced. Ultimately, the purpose of this midpoint review is to get a better understanding of housing production strategy outcomes via a simplified trend analysis of units built and comparing it to a gap analysis of housing need.” Super! Three questions:
 - What data sources should planners use? It is notoriously hard to obtain this data. The data provided annually for the HB 4006 report is by housing type (e.g., single family detached, etc.) and not by tenure or affordability level. But to address whether the housing needs of households are being met, data are needed on the tenure and affordability level. We know that data could be made available on new rent-restricted units and land trust units through OHCS in partnership with the land trusts in the state, but what about the rest of the housing units?
 - How granular will the reporting be? Do you have a chart or table that planners should use?
- The Midpoint Review could be an opportunity for cities to amend/adjust their Housing Production Strategy based on outcomes so far and changing economic conditions. Staff could provide a red-lined/track changes version of their HPS showing proposed changes and provide a brief narrative explaining why changes are being made.

Ethan Stuckmayer
Oregon Department of Land Conservation and Development
June 11, 2020

Re: HB 2001 LCMC off-street parking requirements

Sightline is the Pacific Northwest's sustainability think tank. We were a central part of the coalition of housing advocates, environmentalists, anti-segregation activists and nonprofit and for-profit builders that supported passage of House Bill 2001. In the last year, this bill has already been a model for legislation introduced in six other states. We see its implementation as crucial to its local effectiveness, durability and national impact.

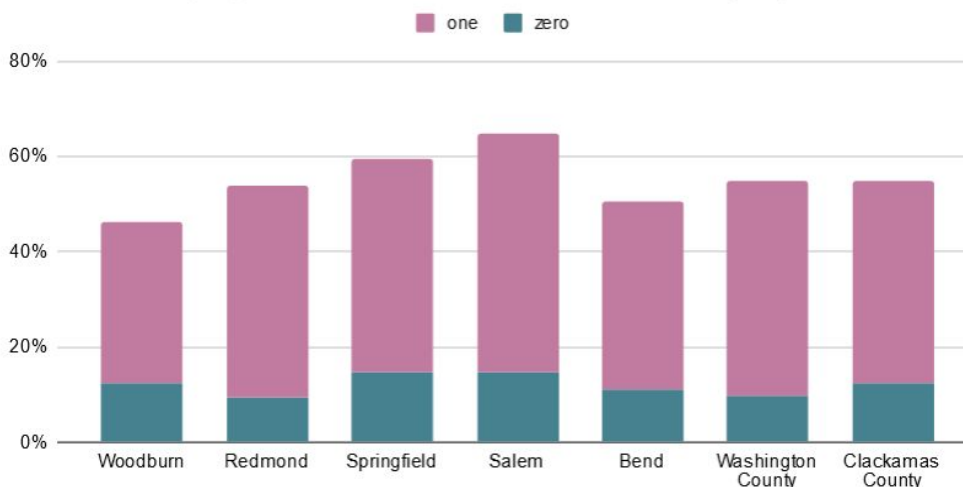
At the request of several members of DLCD's advisory committees, and informed by the new analysis from ECONorthwest, we're writing to urge a new option for parking standards in future discussion drafts of its model code for large cities.

Recommendation for off-street parking requirements: The minimum compliance standard should legalize triplexes that create exactly two off-street parking spaces, and fourplexes that create exactly three. In addition, the state should require cities to let any adequate curbside space adjacent to the property count toward any parking that may be required beyond the first two off-street spaces.

Background

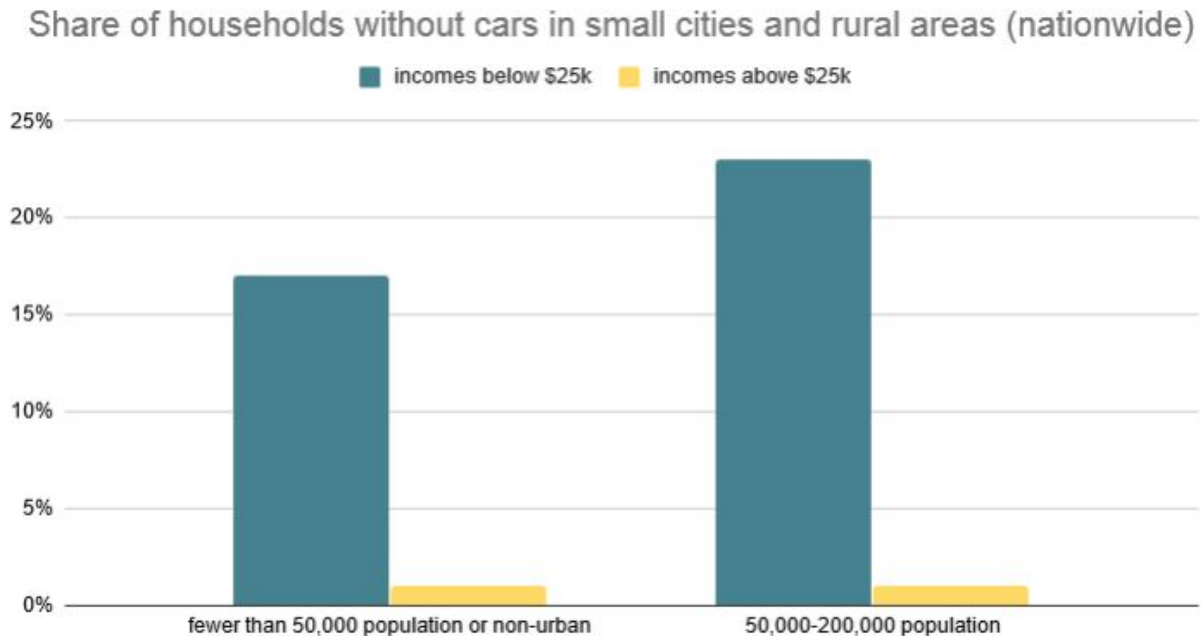
Point 1: Zero-car households are common everywhere in Oregon. In almost every jurisdiction covered by House Bill 2001's "larger cities" category, 10%-15% of tenant households own zero cars, and about half of tenant households, or more, own either one or zero.

Car ownership by tenant households in selected Oregon jurisdictions



source: American Community Survey 2014-2018.

This finding is not attributable to standard survey error, because it shows up independently in every geographic ACS sample. Nor is this unusual for the United States. It's simply concentrated among low-income people:



Source: National Household Transportation Survey 2017.

Many tenant households, of course, own more than one car. Every zoning code in Oregon gives the market plenty of room to serve such households: very few locations set any cap on the amount of new off-street parking. Whatever the results of this rulemaking process, the overwhelming majority of new homes built under HB2001 will probably have dedicated off-street parking spaces, simply because many people prefer them. Every homeseeker with a car thinks about parking, and therefore so does every developer.

But zero-car households are *not* nearly as well-served by the market -- largely because jurisdictions have made it illegal for the market to serve their needs, even in many neighborhoods where living without a car is a viable option for some.

Given these figures, it would be both exclusionary and unreasonable for cities to require households to pay for parking they do not need in order to live in a particular neighborhood. Under HB 2001, new triplexes and fourplexes must be allowed to exist even if they include more homes than they do off-street parking spaces.

Point 2: Most Oregonians would probably prefer buildings legalized by HB 2001 to be attractive.

Requiring four off-street parking spots all but ensures that a fourplex property will be unattractive. This is because buildings with fewer on-site parking spaces have much more room for trees and other plants.

For example, here's a corner triplex with a single shared parking space (around the back, as seen in the second photo).



Here's a fourplex with two off-street parking spaces with a shared driveway around the side:



Compare these to the below fourplex with one space per unit, even one with a narrowed 32-foot driveway like the one encouraged elsewhere in the proposed model code:



Here's a different approach to a 1:1 parking ratio, with a separate curb cut for every unit:



If jurisdictions are allowed to ban parking ratios below 1:1, many will. If they do, they will be making the first and second building types illegal in favor of the third and fourth types. They will then blame the state for the results.

We'd ask the committee and DLCD staff to reflect on the likely political reaction to buildings resembling the above -- especially in light of the fact that each curb cut in the above examples eliminates public parking spaces from the street, essentially privatizing that space.

DLCD can't require new buildings to be physically attractive. But it can at least make more physically attractive options legal.

Point 3: The state's new economic analysis just concluded that fourplexes will be particularly important to housing production under HB 2001. The June 15 analysis commissioned from ECONorthwest contains encouraging estimates that the first two off-street parking spaces aren't a clear barrier to the viability of new housing.

Unfortunately, it also concluded that even in hot housing markets and even with just two off-street parking spaces, triplexes will be barely profitable enough to attract investment:

Exhibit 2: Triplex Results Summary by Lot Size, FAR, and Parking



Source: ECONorthwest

This means the effectiveness of HB 2001 at creating any meaningful amount of infill in larger and metro cities will depend largely on fourplexes. Happily, these are more viable, because there's one more household with whom to share the land cost:

Exhibit 1: Fourplex Results Summary by Lot Size, FAR, and Parking



Source: ECONorthwest

However, this analysis assumes no more than two off-street parking spaces. Higher parking counts, the analysis warned, would make many new infill options geometrically impossible to build because so much land would be dedicated to pavement:

If more parking spaces were required than we tested (e.g., 1 space per unit), this would have more impacts on the possible building footprint and could trigger regulations that require more circulation area (e.g., requiring a turnaround area so that cars do not back out of the driveway). On small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint.

This analysis suggests that if the state were to allow cities to mandate more than two off-street parking spaces, it would be allowing cities to essentially prevent almost all triplex *and* fourplex infill.

Oregon should ensure that its codes align with state policies, especially GHG emission reductions.

Given that the state has many policy goals to reduce vehicle miles traveled and avoid artificially inflating housing costs, it only makes sense to give Oregonians the option to use their land for something other than car storage.

The overwhelming majority of new triplexes and fourplexes in Oregon's larger cities and the Portland metro area can be expected to include off-street parking no matter what these rules say. The goal of thoughtful zoning codes, though, should be to at least leave the door open to any entrepreneurs, now and in the future, who *can* find ways to build and sell homes with less on-site parking, thereby helping some Oregon neighborhoods gradually become more affordable and less auto-dependent in places where this is possible.

The Intergovernmental Panel on Climate Change [estimates](#) that even with rapid electrification of the world's auto fleet, vehicle miles traveled per person will also need to decline by about 20% by 2050 in order to hold warming below 1.5 degrees Celsius.

The text of House Bill 2001 instructs the state to prevent cities from "discouraging the development of all middle housing types permitted in the area through unreasonable costs or delay." Gov. Brown's executive order instructs DLCD to "exercise any and all authority and discretion vested in them by law to help facilitate Oregon's achievement of the GHG emissions reduction goals." The May 15 "[Every Mile Counts](#)" report on implementation of the STS explicitly commits DLCD to parking management action to reduce vehicle miles traveled per capita.

Rules that not merely allow but *require* newly built homes to ignore the needs of 10%-15% of renters are not reasonable. Such rules would also, by law, prevent some neighborhoods from gradually evolving to become less car-dependent. Allowing such bans on incremental car-lite infill would clearly undermine the state's emissions reduction goals.

In summary, we see no reasonable rationale for *any* off-street parking mandates at the city level. Concerns about the need for auto parking are legitimate, but (as LCDC members unanimously observed at their May meeting) nothing in this code prevents the construction of adequate parking. Builders have every incentive to either include adequate parking or else choose a different location for their investment.

For the purposes of this conversation, a *more* reasonable "minimum compliance" standard for Oregon's larger and metro cities would allow jurisdictions to require a parking ratio of no more than 0.6, while allowing adjacent on-street parking spaces to count toward any required space beyond the second.

This would allow jurisdictions to require **up to two off-street parking spaces for a triplex and up to three for a fourplex**, with **one of a fourplex's three spaces** allowed to fall in adjacent on-street space if and only if such curbside space exists.

Michael Andersen
senior researcher, housing and transportation
Sightline Institute

1001 SE Water Ave Suite 205
Portland, OR 97214



June 25, 2020

Via email

Ethan Stuckmayer
Senior Planner of Housing Programs
DLCD

Dear Mr. Stuckmayer:

DLCD is in the process of rulemaking for House Bill 2001. The City of Wilsonville is following the rulemaking closely and has so far not commented and is overall supportive of the great work that is being done. However, we see items emerging that cause concern and drive us to comment.

Discussion is scheduled at today's MCTAC meeting on the topic of "areas zoned". We regret these comments not being sent earlier, but please share them with the MCTAC and RAC and incorporate them into the record of public comments. After reviewing the packet and the two approaches to defining "areas" and then re-reviewing HB 2001, City of Wilsonville staff request the committee consider a different option.

While a whittle away approach may be the RAC's preference for the model middle housing code, due to other assumptions in the model code, the minimum compliance needs to be rethought on performance measures to allow cities the ability to use creativity and adapt to local circumstances to ensure the best outcomes. While there have been stated concerns that cities will try to weasel themselves into minimal compliance, the City encourages the committee to be mindful of the many jurisdictions that are working with state and regional partners to increase housing variety, and that they may very well be hampered from meeting the shared goals by being too specific on minimum compliance.

Cities vary greatly by the era and patterns of development, and need flexibility for different solutions. A city consisting primarily of single-family plats from the early 20th century differs substantially from a city, like Wilsonville, consisting primarily of master planned PUD's incorporating a variety of housing built in the late 20th and early 21st century. Wilsonville has a much wider variety of housing than most communities in Oregon. As recently published in the City's annual housing report the City's housing includes: 50.3% Apartments and Condos, 40.6% Detached Single-family, and 9.1% Middle Housing and Mobile Homes. While more diverse than other suburban cities, Wilsonville is working hard to integrate more middle housing and more housing options.

As outlined above, City staff is concerned that the proposed whittle approach does not allow sufficient flexibility, particularly for a master planning approach or other less traditional (and exclusionary) approaches. Master planned communities can plan for and require a certain amount of middle housing, often producing more middle housing than considering each lot the same and leaving it to market forces to determine the type of unit on a lot. The latter non-master planning approach does not provide any certainty for middle housing, particularly if the profit margin is less than detached single-family.

A lens we recommend decision-makers use is whether Villebois, or other award-winning master planned neighborhoods in the region, could be built under the proposal. Villebois is a master planned "residential area" with over 2,600 units that includes 8 different housing types (together totaling over 1400 units) that are not detached single-family, including carriage homes, fourplexes, row houses including many 5-6 unit buildings, and integrated mental health housing. The housing forms a transect of density and height thoughtfully planned around an integrated parks system and village center. Using the whittle approach, from our understanding of the discussions thus far, Villebois would be a very different place with significantly less variety of housing as the Villebois code would not comply with approaches suggested thus far. Yet, as constructed this community meets the intent of HB 2001, providing a diversity of housing types at a variety of price points. Using characteristics defined at a lot level rather than at a neighborhood level removes local flexibility and creativity; relies on the market, which would not guarantee the type of unit built on each lot; and reduces the ability to intentionally plan communities with the full transect of development types.

Given these concerns, we have considered the balloon approach. For Wilsonville and other smaller jurisdictions the balloon approach doesn't work because it would be hard to find the key differing factors to include some single-family areas and not others. It also seems this would not meet the intent of House Bill 2001 allowing some potentially large swaths of single-family areas to remain exclusionary of middle housing and have a potentially similar effect of not achieving the transects of residential development types we are seeking.

Wilsonville requests a new, alternative approach to minimal compliance that focuses on performance measures over a broader geography. However, if a whittle type approach continues to be pursued, we recommend "positive performance whittling" also be allowed in addition to the "inappropriate land whittling" put forward thus far. The positive performance whittling could push developers to produce more middle housing, in order to whittle out other land within a certain area. An example of "positive performance whittling" is if a PUD or legislative master plan is guaranteeing a certain level of middle housing meeting or exceeding state-set expectations planned in portion of a master plan area; then other portions of the PUD/master plan planned for single-family housing/duplexes can be whittled away. This performance based approach would provide more certainty for infrastructure planning, housing production strategies, and marketing purposes. An example of such potential code language would be:

Allowed uses:

- a. Middle housing as defined . . . except if the following is true:
 1. The subject land is occupied by a single-family dwelling unit or duplex within a Planned Unit Development or Legislative Master Plan with (or required to have) at least six different housing types, besides duplexes and single-family dwelling units, cumulatively making up at least 1/2 of all housing units and non-duplex middle housing (as defined in ORS . . .) making up at least 15% of all housing units.

In conclusion, the City wishes to thank you for your time and dedication to carefully considering these important matters to ensure our communities are more welcoming to all. Wilsonville staff is available for questions or additional discussion on potential language ideas and other aspects of working through to find the best long-term solution for minimal compliance.

Sincerely

A handwritten signature in black ink, appearing to read "Daniel Pauly", is enclosed within a hand-drawn oval.

Daniel Pauly, AICP
Planning Manager
503-570-1536
pauly@ci.wilsonville.or.us

From: [Ellen Miller](#)
To: [Stuckmayer, Ethan](#)
Cc: [Edging, Sean](#); [Young, Kevin](#); [Mansolillo, Robert](#)
Subject: FAR Calculation in Rule
Date: Thursday, June 25, 2020 10:54:07 AM

Hi Ethan,

Listening to Matt's comments on defining FAR in rule, I realized that I never sent our proposal. Please see below and let me know if you have any clarifying questions.

A suggested approach: Floor area is defined by actual livable floor space. Calculation should not include garage. Count the stairs once, measure from the inside of the walls of the living unit and deduct for interior walls. For example a 10' - 2 x 4 wall is (10' x 4") or 3.33'. You would deduct this from the FAR. If you have a wall sitting on the floor it is not an actual floor or usable space.

Thank you!

Sincerely,

Ellen Miller

Government Affairs Director

Cell: 503-409-9502

Office: 503-378-9066 x108

ellen@oregonhba.com



2075 Madrona Avenue SE, Suite 150

Salem, OR 97302

From: [Ed Sullivan](#)
To: [Jennifer Bragar](#); [Taylor Smiley Wolfe](#); [Stuckmayer, Ethan](#); [Young, Kevin](#); [Mary Kyle McCurdy](#); [Andree Tremoulet](#); [SRINIVASAN Kate * HCS](#); [Howard, Gordon](#)
Subject: ADU Case Decided Today
Date: Wednesday, July 1, 2020 10:06:13 AM
Attachments: [Kamps-Hughes v City of Eugene.pdf](#)

Attached, please find the Kamps-Hughes v. City of Eugene case, decided today, in which the Court of Appeals upheld LUBA's remand of the City's denial of zoning verification for an ADU that (LUBA ruled) did not involve "reasonable local regulations relating to siting and design." The Court concluded:

To put it another way, in enacting ORS 197.312(5)(a), the legislature made a statewide policy decision that, in cities and counties over a certain size, it is desirable as a matter of urban planning to allow one ADU per single-family dwelling in areas within a UGB that are zoned for detached single-family dwellings, thus increasing the density of housing development in those areas. The considerations underlying the four Eugene Code standards at issue in this appeal minimizing density and thereby limiting traffic, increasing livability, and preserving neighborhood character—are essentially policy arguments against ADU development in existing residential neighborhoods. The city's proposed construction of ORS 197.312(5)(a) would effectively disregard the legislature's own statewide policy determination in the guise of "siting" regulations.

This decision appears to bode well for the state's pro-housing agenda.
To put it another way, in enacting ORS 197.312(5)(a),
the legislature made a statewide policy decision that, in cit
-

ies and counties over a certain size, it is desirable as a mat
-
ter of urban planning to allow one ADU per single-family
dwelling in areas within a UGB that are zoned for detached
single-family dwellings, thus increasing the density of hous
-
ing development in those areas. The considerations underly
-
ing the four Eugene Code standards at issue in this appeal—
minimizing density and thereby limiting traffic, increasing
livability, and preserving neighborhood character—are
essentially policy arguments
against
ADU development in
existing residential neighborhoods. The city's proposed con
-
struction of ORS 197.312(5)(a) would effectively disregard
the legislature's own statewide policy determination in the

guise of “siting” regulations

To put it another way, in enacting ORS 197.312(5)(a), the legislature made a statewide policy decision that, in cit

-

ies and counties over a certain size, it is desirable as a mat

-

ter of urban planning to allow one ADU per single-family dwelling in areas within a UGB that are zoned for detached single-family dwellings, thus increasing the density of hous

-

ing development in those areas. The considerations underly

-

ing the four Eugene Code standards at issue in this appeal—minimizing density and thereby limiting traffic, increasing livability, and preserving neighborhood character—are essentially policy arguments

against

ADU development in

existing residential neighborhoods. The city’s proposed con

-

struction of ORS 197.312(5)(a) would effectively disregard the legislature’s own statewide policy determination in the guise of “siting” regulations

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

Nicholas KAMPS-HUGHES,
Respondent,

v.

CITY OF EUGENE,
Petitioner,
and

Paul T. CONTE,
Intervenor-Respondent below.

Land Use Board of Appeals
2019115; A173517

Submitted April 24, 2020.

Emily N. Jerome filed the brief for petitioner.

Bill Kloos and Law Office of Bill Kloos PC filed the brief for respondent.

Christopher D. Crean and Beery, Elsner & Hammond, LLP, filed the brief *amicus curiae* for League of Oregon Cities.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Aoyagi, Judge.

AOYAGI, J.

Affirmed.

AOYAGI, J.

ORS 197.312(5)(a) provides that cities and counties over a certain size “shall allow in areas within the urban growth boundary [(UGB)] that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit [(ADU)] for each detached single-family dwelling, subject to reasonable local regulations *relating to siting and design*.” (Emphasis added.)¹ Kamps-Hughes, who wants to build an ADU on his property, requested zone verification from the City of Eugene, including asking the city to identify Eugene Code (EC) provisions that it considers applicable to his ADU proposal. In response, the city identified 11 standards that it views as relating to “siting and design” and that effectively preclude Kamps-Hughes from building an ADU. Kamps-Hughes appealed to the Land Use Board of Appeals (LUBA), asserting that, as to six of the standards, the city is misinterpreting the statutory phrase “relating to siting and design” and thus imposing impermissible restrictions on ADU development. In its final order, LUBA agreed with Kamps-Hughes as to four of the standards. The city seeks judicial review, arguing that LUBA misconstrued ORS 197.312(5). We affirm.

FACTS

The pertinent facts are set out in LUBA’s final order and are unchallenged. Kamps-Hughes owns real property in the Fairmount neighborhood of Eugene. The property is zoned Low Density Residential (R-1), has a lot size of 5,663 square feet (72.9 feet by 80 feet), and is accessible only via an alleyway. There is a single-family dwelling on the property—a two-story, four-bedroom house totaling 1,680 square feet—that is currently used as a residential rental.

This appeal arises from Kamps-Hughes’ ongoing efforts to obtain verification from the city as to whether he can build a detached ADU on his property. Kamps-Hughes first submitted a zone-verification request in July 2018,

¹ ORS 197.312 has been amended since this case began, but the amendments do not affect our analysis, so all citations to ORS 197.312 are to the current statute. Similarly, certain Eugene Code provisions cited herein have been amended since this case began, but those amendments do not affect our analysis, so all citations to the Eugene Code are to the current code.

seeking to resolve that question. *See* EC 9.1080 (describing zone verification as a process “used by the city to evaluate whether a proposed building or land use activity would be a permitted use or subject to land use application approval or special standards applicable to the category of use and the zone of property”). In response, the city planner issued a zone-verification decision stating that a detached ADU was not permitted on the property because a Eugene Code provision prohibits ADUs on alley-access lots.

Kamps-Hughes appealed to LUBA, arguing that the city planner had failed to apply ORS 197.312(5)(a), enacted in 2017, which provides:

“A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.”

LUBA agreed with Kamps-Hughes that the city planner had erred in not applying ORS 197.312(5) and remanded for her to do so. Meanwhile, Kamps-Hughes filed a second zone-verification request in December 2018.

On remand, the city planner issued a zone-verification decision that Kamps-Hughes’s proposed second dwelling was not a permitted use in the R-1 zone and did not qualify as an ADU under ORS 197.312(5). Kamps-Hughes appealed to LUBA. LUBA concluded that the city planner had misconstrued ORS 197.312(5), that the proposed second dwelling met the statutory definition of an ADU, and that the city therefore had to allow the proposed ADU, subject only to “reasonable local regulations relating to siting and design.” ORS 197.312(5)(a). LUBA remanded to the city, expressing no opinion as to what qualified as “reasonable local regulations relating to siting and design,” because the city had yet to apply any such regulations.

On remand, the city planner issued a third zone-verification decision, this time addressing particular Eugene Code provisions that the city would apply to Kamps-Hughes’s proposed ADU, including 11 standards that the

city considers “reasonable local regulations relating to siting and design.” The practical effect of those standards is to preclude Kamps-Hughes from building an ADU on his property. Kamps-Hughes again appealed to LUBA, arguing, among other things, that six of the standards do not relate to “siting and design” and therefore constitute impermissible local restrictions on ADU development. In response, the city argued that all six standards relate to the “siting and design” of ADUs and thus are permissible restrictions under ORS 197.312(5)(a).

LUBA agreed with Kamps-Hughes that four of the standards do not relate to “siting and design” and that their application to Kamps-Hughes’s ADU proposal therefore is inconsistent with ORS 197.312(5)(a).² Those four standards are:

- a prohibition on new ADUs on lots accessed only by an alleyway, EC 9.2741(2) and 9.2751(18)(a)(2);
- a minimum lot-size requirement of 7,500 square feet, EC 9.2751(17)(c)(1);
- a minimum lot-dimension requirement of 45 feet by 45 feet, EC 9.2751(17)(c)(2); and
- occupancy limits for an ADU, EC 9.2751(17)(c)(7).

In short, the city had argued to LUBA that those four standards relate to “siting” because they relate to “where in each of the city’s residential zones ADUs are allowed based on factors such as traffic, livability, and existing density,” whereas Kamps-Hughes had argued that they do not relate to “siting” because regulations “relating to siting” means regulations that “specify the location of an ADU *on a site*,” which none of those four standards do. LUBA agreed with Kamps-Hughes and rejected the city’s more expansive view of “siting.”³

² LUBA agreed with the city that the other two challenged standards *do* relate to siting and design. Because Kamps-Hughes has not cross-appealed and does not challenge that determination, we do not discuss those other two standards.

³ Although not at issue on appeal, we note that, while LUBA agreed with Kamps-Hughes that four of the city’s standards for ADU development are inconsistent with ORS 197.312(5)(a), LUBA rejected Kamps-Hughes’s separate

The city appeals LUBA's final order, asserting a single assignment of error in which it challenges LUBA's construction of ORS 197.312(5).

ANALYSIS

We will reverse LUBA's order if it is "unlawful in substance." ORS 197.850(9)(a); *Columbia Pacific v. City of Portland*, 289 Or App 739, 745, 412 P3d 258, *rev den*, 363 Or 390 (2018). In this case, our task is to determine whether LUBA's construction of ORS 197.312(5) is legally correct, as relevant to whether the city may apply the four aforementioned standards to ADU development without contravening the statute. Toward that end, "we employ our usual methodology to determine the legislature's intention in enacting a statute by looking at the text of the statute in context, along with any useful legislative history." *Oregon Mutual Ins. Co. v. Certain Underwriters*, 295 Or App 790, 795, 437 P3d 232 (2019).

As a preliminary matter, we must determine what portion of ORS 197.312(5) is at issue. In its opening brief, the city asserts that the "first interpretative" issue for us is to construe ORS 197.312(5)(b) to determine whether Kamps-Hughes's proposed second dwelling meetings the statutory definition of an ADU. Kamps-Hughes responds that that issue is not properly before us, because LUBA decided in a previous final order that Kamps-Hughes's proposed second dwelling *does* meet the statutory definition of an ADU, and the city did not seek judicial review of that order. Relatedly, Kamps-Hughes notes that, because that issue had already been decided in an earlier proceeding, the parties did not brief it to LUBA in this proceeding, nor did LUBA address it. We agree with Kamps-Hughes that the ADU-definitional issue is not reviewable in this appeal. An appellate court cannot "review legal issues that LUBA decided, not in the order under review, but in an earlier order in the same case, for which judicial review was not sought." *Beck v. City of Tillamook*, 313 Or 148, 151, 831 P2d 678 (1992). We therefore

argument (which it described as Kamps-Hughes's "major premise") that ORS 197.312(5)(a) precludes any local regulation that in effect prevents the development of at least one ADU on each lot with a single-family dwelling, even if the regulation is "reasonable" and relates to "siting and design."

accept as established that Kamps-Hughes's second dwelling is an ADU under ORS 197.312(5)(b).

What *is* properly before us is the city's argument that LUBA misconstrued the phrase "reasonable local regulations relating to siting and design" in ORS 197.312(5)(a). The crux of that argument is that LUBA erred in adopting Kamps-Hughes's interpretation of the word "siting," instead of the city's interpretation of the word "siting," although the city also makes arguments about the words "reasonable" and "relating to," to the effect that they provide context for the word "siting" that supports the city's interpretation of "siting." Kamps-Hughes maintains that LUBA did not err and that LUBA's construction is consistent with the text, context, and legislative purpose.

Notably, the meaning of "design" is not in dispute. The city argues, Kamps-Hughes implicitly agrees, and we too agree that the legislature intended "relating to siting and design" to be read disjunctively. That is, with respect to the development of ADUs, ORS 197.312(5)(a) permits reasonable local regulations that relate to siting, design, or both. *See Webster's Third New Int'l Dictionary* 80 (unabridged ed 2002) (defining "and" to include "reference to either or both of two alternatives *** esp. in legal language when also plainly intended to mean *or*" (emphasis in original)); *see also, e.g., Ollilo v. Clatskanie P. U. D.*, 170 Or 173, 180, 132 P2d 416 (1942) ("[A]nd' may be construed to mean 'or' when necessary to effectuate the intention of the legislature and to avoid an unreasonable or absurd result[.]"). In this case, the city argues that the four standards at issue relate only to "siting," not "design," so we limit our analysis to whether LUBA correctly construed the phrase "relating to siting."

We begin with the statutory text, as "there is no more persuasive evidence of the intent of the legislature." *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009). As previously described, ORS 197.312(5)(a) provides that "[a] city with a population greater than 2,500 or a county with a population greater than 15,000"—which it is undisputed includes the City of Eugene—"shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one

accessory dwelling unit for each detached single-family dwelling, *subject to reasonable local regulations relating to siting and design.*" (Emphasis added.)

The word "siting" is not defined in the statutory scheme, so LUBA looked to a dictionary to discern its "plain, natural, and ordinary meaning." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993) (as a rule of statutory construction, "words of common usage typically should be given their plain, natural, and ordinary meaning"). Noting that "siting" is a gerund derived from "site," LUBA correctly identified the relevant common definition of "site" as "**2 a** : the local position of building *** either constructed or to be constructed esp. in connection with its surroundings *** **b** : a space of ground occupied or to be occupied by a building *** **c** : land made suitable for building purposes by dividing into lots, laying out streets, and providing facilities." *Webster's* at 2128.

In LUBA's view, "the dictionary definition of the word 'site' is specific to a particular property, and not to a wide area, and supports an interpretation of the word 'siting' as relating to an ADU's location or placement on a property that includes a single-family dwelling." In its final order, LUBA cites "examples" of "typical siting regulation[s]" as including "a setback that requires a building located on a property to be constructed some specified distance from a marker, such as a property line"; "a requirement that development not occur in a wetland or otherwise environmentally sensitive area or inside a floodplain"; or "an access site distance requirement to ensure safe ingress and egress."

The city does not contest that LUBA's interpretation is one meaning of "siting." Indeed, the city itself uses "siting" in that manner in its own brief, stating, for example, that, under the Eugene Code, "only one single-family dwelling may be sited" on an alley-access lot. The city argues, however, that LUBA erroneously relied *solely* on the common meaning of the word and failed to consider that "siting" has a "technical meaning in the land use arena" that must also be considered. See *Friends of Yamhill County v. Yamhill County*, 301 Or App 726, 733, 458 P3d 1130 (2020) ("There are times, however, when undefined statutory terms carry

a more technical meaning, particularly when they are used as terms of art in a specialized area of the law.”). The city argues that the “technical meaning” of “siting” is “clear from its abundant use through the State’s land use laws,” and the city and *amicus curiae* League of Oregon Cities (LOC) cite various statutes that use the word “siting” to describe the placement of things within a larger area, rather than on an individual lot. For example, ORS 197.296(6)(a) requires a city to amend its UGB in certain circumstances to “include sufficient land reasonably necessary to accommodate the siting of new public school facilities.”

We agree with the city that “siting” may refer to the placement of a particular type of facility or building within a larger area (such as the area within a UGB) or may refer to the placement of a facility or building within a smaller area (such as the area within an individual lot). In our view, however, those dual possibilities are both consistent with the dictionary definition of “site.” To the extent LUBA viewed the dictionary definition otherwise, we diverge on that point. We instead agree with the city that the word “siting,” in isolation, could refer to the siting of ADUs within areas of the city zoned for detached single-family dwellings, the siting of ADUs on individual lots, or both.⁴ The question is which meaning the legislature intended, which requires us to look to context and any helpful legislative history.

The context of “siting” supports LUBA’s construction. Most significantly, ORS 197.312(5)(a) requires cities and counties over a certain size to allow, in areas within their UGBs that are zoned for detached single-family dwellings, “the development of at least one [ADU] *for each detached single-family dwelling*,” subject only to reasonable local regulations relating to siting and design. (Emphasis added.) The specificity of that provision is telling. It focuses on individual single-family dwellings, which is consistent with an “individual lot” view of siting. Moreover, the express imposition of a one-to-one allowance ratio defeats the city’s

⁴ Although the city never says so expressly, we understand it to be arguing that “siting” in ORS 197.312(5)(a) encompasses *both* types of siting. That is, we understand the city to view ORS 197.312(5)(a) as allowing it to regulate where ADUs are placed within areas of the city zoned for detached single-family dwellings *and* to regulate where ADUs are placed on individual lots.

specific proposed construction. As we understand it, the city is relying on its interpretation of “siting” to posit a construction of ORS 197.312(5)(a) under which the city could effectively ignore the statutory one-to-one allowance ratio and impose any “reasonable” limitation on where ADUs may be built within areas zoned for single-family dwellings, even if it resulted in the allowance of far fewer than one ADU per single-family dwelling. The city’s proposed construction would thus effectively read the one-to-one allowance ratio out of the statute.

That does not entirely resolve the issue, however, because there is a potentially plausible variation on the city’s argument that would use the city’s interpretation of “siting” but still give effect to the one-to-one allowance ratio. Specifically, one could read ORS 197.312(5)(a) as giving cities and counties authority to regulate which lots within areas zoned for single-family dwellings are allowed to have ADUs by application of a broad range of “siting” regulations, so long as the total ratio of allowed ADUs to single-family dwellings remained one-to-one. Under that reading, for example, the city could prohibit ADUs on 50 percent of the lots in an area within its UGB that is zoned for detached single-family dwellings, by application of minimum lot-size requirements and the like, so long as the city allowed at least *two* ADUs on the remaining 50 percent of the lots in that area, to satisfy the one-to-one allowance ratio.

Although it is possible that that is what the legislature intended, it seems unlikely. LUBA’s construction of ORS 197.312(5)(a) is relatively straightforward and easy to apply. It requires cities and counties to allow the development of at least one ADU per detached single-family dwelling in areas within the UGB zoned for detached single-family dwellings, subject only to reasonable local regulations as to where ADUs may be placed on individual lots and their design. By contrast, an alternative construction that would incorporate the city’s interpretation of “siting” while still giving effect to the allowance ratio—that cities and counties must allow the development of at least one ADU per detached single-family dwelling in areas within the UGB zoned for detached single-family dwellings, but that they have broad discretion

to decide where ADUs may be placed throughout those areas, as long as the ultimate ratio is one-to-one—would be impractical to apply, particularly with regard to ensuring compliance with the allowance ratio. No one is championing such a difficult-to-apply construction of ORS 197.312(5)(a), and we conclude that the legislature more likely intended LUBA's construction than that one.⁵

As for the city's argument (supported by LOC) that there are far more Oregon statutes that use "siting" to refer to "siting" within a larger area—such as statutes that pertain to the "siting" of new airports, new corrections facilities, destination resorts on the Metolius River, dwellings and other structures in landslide areas, new school facilities, wineries, and energy facilities⁶—than there are Oregon statutes that use "siting" to refer to siting limitations on individual lots, we do not find that argument persuasive. For one thing, we do not understand the city to be arguing that "siting" does *not* include siting on a lot but, rather, that it also can mean siting in a larger area. *See* 305 Or App at 232 n 4. For another thing, it is entirely unsurprising that the state legislature would tend to concern itself with overall urban planning and with legislation that ensures adequate public facilities in larger areas, while leaving regulation at the individual-lot level to local authorities. Indeed, that is precisely what ORS 197.312(5) does: it reflects the legislature's general urban-planning policy decision to promote ADU development by allowing at least one ADU per single-family dwelling in areas zoned for detached single-family dwellings, but it leaves to cities and counties the task of regulating (reasonably) where ADUs may be sited on individual lots and how they are designed.

⁵ Of course, as previously noted, LUBA rejected Kamps-Hughes's argument that the statute literally requires the city to allow at least one ADU on *every* lot, and we do not mean to suggest that we disagree with that conclusion. To the contrary, we express no opinion on that issue, as it is not before us. Our point is merely that the practical realities of the one-to-one allowance ratio make it unlikely that the legislature intended "siting" to be interpreted in a way that would allow the city to preclude ADU development on many lots and thus make it very complicated to apply and enforce the express allowance ratio.

⁶ In providing examples from the city's and LOC's briefing, we do not necessarily agree with the city's and LOC's express or implied construction of all of the relevant statutes and express no opinion as to the correct construction of any one of those statutes.

Finally, LUBA's construction is the most consistent with the legislature's purpose to increase the availability of affordable housing. ORS 197.295 to 197.314 are sometimes referred to as Oregon's "needed housing statutes." *Warren v. Washington County*, 296 Or App 595, 597, 439 P3d 581, *rev den*, 365 Or 502 (2019). In 2017, the legislature amended a number of those statutes, including adding ORS 197.312(5). The addition of ORS 197.312(5), as well as other aspects of that legislation, "reflect an intention to promote certain housing development":

"For example, the legislation includes provisions that, under specified circumstances, impose relatively short timelines for processing applications for development of affordable multifamily housing, prohibit counties from reducing the density associated with certain proposed housing developments, redefine 'needed housing' to expressly address 'affordability' to households within the county with a variety of incomes,' *require certain municipalities to allow accessory dwelling units*, and permit places of worship to use their real property to provide affordable housing. Or Laws 2017, ch 745, §§ 1, 2, 3, 4, 6, 7, 8. Each of those provisions may be viewed as promoting housing development ***."

Warren, 296 Or App at 600 (emphasis added).⁷

Given that the general purpose of the legislation was to promote housing development (including denser housing development) and that the specific purpose of ORS 197.312(5) was to permit more ADU development, we agree with LUBA that the city's "wide ranging definition of a siting regulation as one that determines where in areas of the city zoned for residential development ADUs can be developed is not consistent with the legislature's intent to create more housing and more housing types, including more ADUs, because a city could effectively prohibit development of ADUs in most areas of a city through adoption or application of minimum lot sizes" and the like. Although a modified version of the city's proposed construction—adopting the city's interpretation of "siting" but giving effect to the one-to-one allowance ratio—would be consistent with the legislative purpose, its

⁷ Beyond the general purpose of the 2017 legislation, the parties have not identified, and we are not aware of, any useful legislative history of ORS 197.312(5)(a).

impracticality leads us to believe that the legislature did not intend that construction.

To put it another way, in enacting ORS 197.312(5)(a), the legislature made a statewide policy decision that, in cities and counties over a certain size, it is desirable as a matter of urban planning to allow one ADU per single-family dwelling in areas within a UGB that are zoned for detached single-family dwellings, thus increasing the density of housing development in those areas. The considerations underlying the four Eugene Code standards at issue in this appeal—minimizing density and thereby limiting traffic, increasing livability, and preserving neighborhood character—are essentially policy arguments *against* ADU development in existing residential neighborhoods. The city’s proposed construction of ORS 197.312(5)(a) would effectively disregard the legislature’s own statewide policy determination in the guise of “siting” regulations.

On that point, the city argues that the “reasonableness” limitation in ORS 197.312(5)(a) would ensure that the city did not abuse its discretion in deciding where to allow ADUs within areas zoned for single-family dwellings—and that LUBA’s construction of “siting” “fail[s] to give any meaning at all to the term ‘reasonable.’” We disagree on both points. It is primarily the one-to-one allowance ratio, not the “reasonableness” limitation, that prevents cities and counties from circumventing the legislative intent. As for LUBA’s construction of “siting” purportedly depriving the word “reasonable” of any effect, the city seems to assume that all local regulations regarding where ADUs are placed on individual lots are necessarily reasonable, such that there would be no point in imposing a “reasonableness” limitation if that is what “siting” means. But that is a false premise. Local regulations related to where ADUs may be placed on individual lots may be reasonable or unreasonable, and only reasonable ones are allowed under ORS 197.312(5)(a). The reasonableness limitation has full effect under LUBA’s interpretation of “siting.”

We are similarly unpersuaded by the city’s argument that LUBA’s construction of “siting” fails to give any effect to the contextual words “relating to.” The thrust of

the city's argument is that "relating to" means "directly or indirectly relating to," not only "directly relating to." Even if LUBA had interpreted "relating to" as meaning "directly relating to," rather than "directly or indirectly relating to," that would not deprive the phrase "relating to" of any effect—it would deprive it only of the city's preferred effect. In reality, however, we do not understand LUBA to have expressed any view on how directly a regulation must relate to siting, or how indirectly it may relate to siting, to be permissible under ORS 197.312(5)(a). Instead, we understand LUBA to have focused—appropriately—on whether the four regulations relate to siting *at all*, as determined by what the legislature intended "siting" to mean.

Finally, the city argues briefly that a 2019 amendment codified at ORS 197.312(5)(b)(B)—which expressly excludes owner-occupancy requirements and new off-street-parking requirements from the definition of "[r]easonable local regulations relating to siting and design"—supports the city's interpretation of "siting," because it necessarily recognizes owner-occupancy and off-street-parking requirements as "siting" regulations. We generally do not consider later-enacted amendments in construing statutory language. *See DeFazio v. WPPSS*, 296 Or 550, 561, 679 P2d 1316 (1984) ("The views legislators have of existing law may shed light on a new enactment, but it is of no weight in interpreting a law enacted by their predecessors."). In any event, although the city assumes that the 2019 legislature viewed those specific types of regulations as relating to siting but unreasonable, it is as likely that it viewed them as not relating to siting or design at all and simply wanted to act quickly to stop their being used to prevent ADU development. In this very case, in its first zone-verification decision, the city cited its owner-occupancy requirement as an additional reason that Kamps-Hughes could not build an ADU on his property.

In sum, based on the text, context, and legislative purpose of ORS 197.312(5)(a), we agree with LUBA that reasonable local regulations "relating to siting" means reasonable local regulations relating to where ADUs are sited on a lot, not where they are sited within areas zoned for detached single-family dwellings.

The only remaining question, then, is whether LUBA correctly applied the statute, so construed, to Eugene's regulations prohibiting new ADUs on lots accessed only by an alleyway (EC 9.2741(2) and 9.2751(18)(a)(2)), imposing a minimum lot-size requirement of 7,500 square feet (EC 9.2751(17)(c)(1)), imposing a minimum lot-dimension requirement of 45 feet by 45 feet (EC 9.2751(17)(c)(2)),⁸ and imposing occupancy limits for an ADU (EC 9.2751(17)(c)(7)). The city effectively concedes that, if LUBA's interpretation of "siting" is correct, then none of those regulations relate to "siting," and we agree. As to the minimum lot-size requirement, minimum lot-dimension requirement, and occupancy limits, we readily conclude that those are not regulations relating to siting. The alley-access prohibition is a closer question, but we ultimately conclude that it too is not a regulation relating to siting.

Accordingly, LUBA did not err in its construction and application of ORS 197.312(5)(a) to the four ADU development standards at issue.

Affirmed.

⁸ Kamps-Hughes's property appears to meet the minimum lot-dimension requirement in EC 9.2751(17)(c)(2), but no one has suggested that that affects our ability to address it.

From: [Kelly O'Neill Jr.](#)
To: [Housing DLCD](#); [Howard, Gordon](#); [Donnelly, Jennifer](#)
Cc: [Emily Meharg](#); [Shelley Denison](#)
Subject: Flexibility for local government - rule making comment
Date: Wednesday, July 1, 2020 2:01:52 PM

DLCD staff - Mr. Gordon Howard stated in a recent OPN post that DLCD is seeking input on HB 2001 rule writing.

I thank you for the opportunity to comment. I generally like flexibility in state laws and local municipal codes. With that being said, I cannot support additional flexibility which will lead to removal of beyond middle housing (i.e. triplexes, fourplexes, etc.) within certain areas within a given city. Please do not create a methodology to allow additional exclusionary zoning within a city. By allowing flexibility for certain areas in certain cities to not exceed density greater than a duplex we run the risk of perpetuating housing segregation.

This is well explained by Mr. Richard Rothstein in *The Color of Law: A Forgotten History of How Our Government Segregated America*. Mr Rothstein is a Distinguished Fellow at the Economic Policy Institute and a Senior Fellow at the Thurmond Marshall Institute.

Please let me know if you want to discuss this in greater detail or would like me to forward my comment to someone else within DLCD.

Have a great week and thanks for everything you do at DLCD. -Kelly

--

Kelly O'Neill Jr.
Development Services Director

City of Sandy
Development Services Department
39250 Pioneer Blvd
Sandy, OR 97055
(503) 489-2163
koneill@ci.sandy.or.us

This e-mail is a public record of the City of Sandy and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

From: [Michael Andersen](#)
To: [Stuckmayer, Ethan](#); [Edging, Sean](#)
Subject: Re: joint letter on parking & lot size in LMCMC
Date: Friday, July 3, 2020 12:54:46 PM

A thought I had while sending this: the second sentence in that first recommendation was intended purely to calm the discomfort of folks who are afraid of parking maximums, but ... actually I think there's a pretty good case that regulatory parking maximums would also be an unreasonable burden to the creation of middle housing!

I wonder if you might actually be able to calm some of those fears yourselves by *including a ban on parking maximums* for smallplexes in the "minimum compliance" standard.

Michael

Michael Andersen | senior researcher, housing and transportation | Based in Portland | him or them
Sightline Institute | www.sightline.org | Find us on [Facebook](#) and [Twitter](#)
M 503.333.7824 | Zoom: 702.268.5970 | [@andersem](#)

From: Michael Andersen
Sent: Friday, July 3, 2020 12:44 PM
To: Stuckmayer, Ethan <ethan.stuckmayer@state.or.us>; Edging, Sean <sean.edging@state.or.us>
Subject: joint letter on parking & lot size in LMCMC

Hi, guys -

Based on some feedback from Sean, some of us put together the attached letter about a slightly tweaked approach to parking in the large-cities minimum compliance standard. To summarize:

Proposal 1. For lots of 6,000 square feet or less, or those with less than 60 feet of street frontage, cities should not be allowed to require more than two off-street parking spaces per triplex or fourplex. However, developers should be allowed to make site-specific decisions to build more spaces if they conclude future residents will demand it.

Proposal 2. For lots of any size where new homes can be added without demolishing existing structures -- either through addition or internal conversion -- the added homes should trigger no additional parking requirement.

Here are the folks who were able to sign on as of last night:

Kaarin Knudson, AIA, Better Housing Together (TAC member)
Mary Kyle McCurdy, 1000 Friends of Oregon (RAC & TAC member)
Tim Morris, Springfield Eugene Tenant Association (RAC Member)
Ted Reid, Metro Planning and Development (RAC & TAC member)
Kol Peterson (TAC member)
Ed Sullivan (RAC member)
Michael Andersen, Sightline Institute
Daniel Bachhuber, Tualatin planning commissioner
Andrew Brand, president, Evergreen Housing Development Group
Neil Heller, Neighborhood Workshop
Kathryn Olney and David Welton, Bend YIMBY
Eli Spevak, Orange Splot
Sara Wright, Oregon Environmental Council

Michael

—

Michael Andersen | senior researcher, housing and transportation | Based in Portland | him or them
Sightline Institute | www.sightline.org | Find us on [Facebook](#) and [Twitter](#)
M 503.333.7824 | Zoom: 702.268.5970 | [@andersem](#)

To: Ethan Stuckmayer
Oregon Department of Land Conservation and Development
July 2, 2020

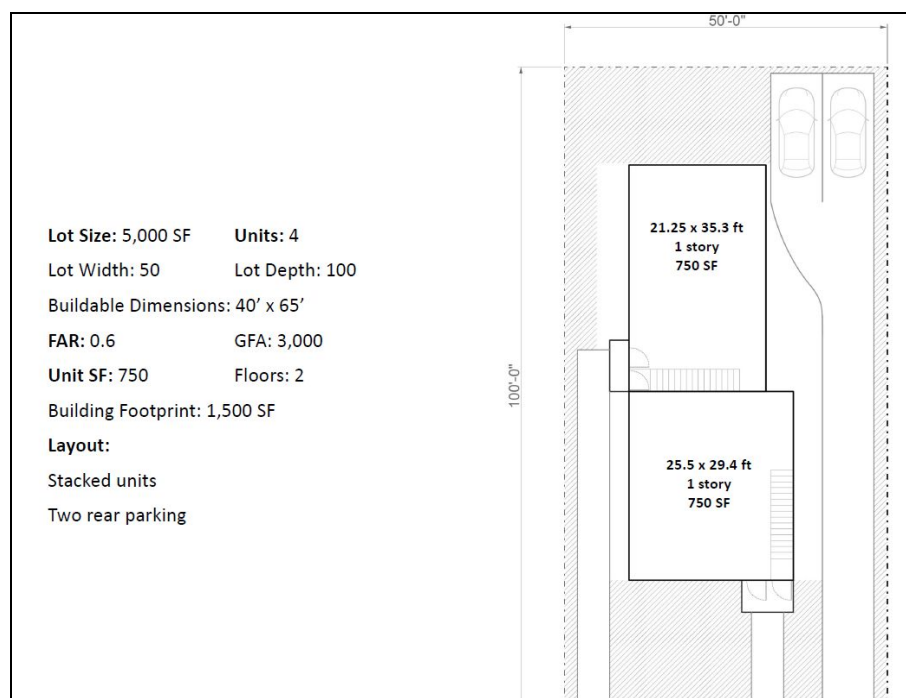
Re: HB 2001 LMCMC off-street parking requirements

We endorse **parking standards tiered by lot size** in the minimum compliance standard of Oregon's middle housing rules for large and metro cities. We also endorse, across all lot sizes in both the minimum compliance standard and model code, **no additional off-street parking requirement when an existing dwelling is preserved** during the addition of middle housing.

Proposal 1. For lots of 6,000 square feet or less, or those with less than 60 feet of street frontage, cities should not be allowed to require more than two off-street parking spaces per triplex or fourplex. However, developers should be allowed to make site-specific decisions to build more spaces if they conclude future residents will demand it.

Rationale. Small residential lot geometry, as modeled in the newly circulated site plans from SERA, makes it obvious: on smaller lots, triplexes and fourplexes will not be possible in much of Oregon's large and metro cities if jurisdictions are allowed to require three or more off-street parking spaces. Furthermore, some future residents may not need those spaces.

If it were to allow jurisdictions to require three or more off street parking spaces on small lots, the state would be enabling the effective exclusion of these middle housing types from "hot markets," where this housing type is likely to be in the highest demand.



The related ECONorthwest economic analysis, which focused mostly on testing the feasibility designs with up to two parking spaces total, echoes this:

If more parking spaces were required than we tested (e.g., 1 space per unit), this would have more impacts on the possible building footprint and could trigger regulations that require more circulation area (e.g., requiring a turnaround area so that cars do not back out of the driveway). On small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint.

This is not to deny that adequate auto parking is a very important amenity. In fact, that's exactly why excessive mandates are unnecessary and therefore unreasonable. In many Oregon neighborhoods, it's economically impossible to build a home without at least one on-site parking space per unit. In many places, this will simply mean that fourplexes will not be built, legal or no.

However, in locations where Oregonians *can* find ways to live without a car, citywide laws should not require them to pay for space they don't need -- especially if the result is fewer and more expensive homes. For cities to require unnecessary parking space would put an "unreasonable cost" on the creation of middle housing, resulting in long-term burdens and exclusions that will fall heaviest on households that do not own cars. Therefore, this would violate HB 2001, Sec. 2(5). Federal data show that in cities like Redmond, Woodburn, Bend and Springfield, these households generally fall in the poorest 10 to 15 percent of the population. We should not further entrench neighborhood-level segregation in Oregon over the century to come for the sake of parking requirements.

In the shorter term, triplexes and fourplexes that require fewer driveways will also tend to be more physically attractive, and will destroy less public curbside space, than buildings with many driveways. Here are two examples of modern fourplexes, one with two off-street spaces and one with four:





Proposal 2. For lots of any size where new homes can be added without demolishing existing structures -- either through addition or internal conversion -- the added homes should trigger no additional parking requirement.

Rationale. As DLCD's advisory committees have previously discussed, Oregon has an interest in retaining existing structures. This is part of a climate strategy, among other things. Many Oregon lots with existing structures have room to add two or three homes, but the existing building or road access is situated in such a way that it would be difficult to add two or three additional parking spaces unless the older building were demolished.

Therefore, when existing structures can be retained on lots of any size, creating additional housing should take priority over creating additional parking. In this situation, the newly created homes should not trigger additional parking requirements, regardless of lot size. If a landowner can find a feasible way to add homes to their property without demolition, additional off-street parking requirements necessarily become an unreasonable cost for creating middle housing.

Kaarin Knudson, AIA, Better Housing Together (TAC member)
Mary Kyle McCurdy, 1000 Friends of Oregon (RAC & TAC member)
Tim Morris, Springfield Eugene Tenant Association (RAC Member)
Ted Reid, Metro Planning and Development (RAC & TAC member)
Kol Peterson (TAC member)
Ed Sullivan (RAC member)
Michael Andersen, Sightline Institute
Daniel Bachhuber, Tualatin planning commissioner
Andrew Brand, president, Evergreen Housing Development Group
Neil Heller, Neighborhood Workshop
Kathryn Olney and David Welton, Bend YIMBY
Eli Spevak, Orange Splot
Sara Wright, Oregon Environmental Council

July 3, 2020

To: Ethan Stuckmayer and MCTAC members

Re: HB2001 Cottage Cluster code

Thank you for the opportunity to review the first round of implementation work on the Cottage Cluster portion of HB2001. My hope is that a few suggestions contained herein will make this re-emerging housing type work for a wider range of for-profit and non-profit builders who serve first time homebuyers.

As currently proposed, unfortunately, the cottage cluster code wouldn't support fee simple ownership models. This is a major obstacle, since builders, buyers and lenders all prefer fee simple ownership.

It also wouldn't work well for rentals, because state statute requires that they be detached. I recognize that HB2001's language ties your hands on this. Small clusters of detached homes are more expensive than other forms of rental housing on a per-square-foot basis to build, maintain, and heat/cool due to their high skin-to-volume ratio. For these reasons, a developer interested in building rental housing is much more likely to opt for attached and/or larger multifamily models that are more efficient to build and manage. Although some small detached rental clusters do exist in Oregon (including the Catterlin Cottages in Salem and some nearby), they're typically WWII vintage and quite rare. Meanwhile, on properties with low density multi-family zoning that would allow detached or attached housing, builders of rental housing consistently build attached housing products – which wouldn't be allowed under the cottage cluster code.

Back to ownership... It's true that some builders have reluctantly started overlaying condominium ownership on cottage cluster layouts in order to sell homes to individual buyers. But this only happens in expensive markets (like Portland) and is often just an end-run around unwieldy and time-consuming subdivision processes. Builders would rather have separate lots to sell, and buyers and lenders prefer this too. Unlike many other states, Oregon never got around to adopting cooperative housing statute into ORS – so mortgage financing for housing coop shares isn't available in Oregon (it is, in WA). I think it's unlikely that for-sale cottage cluster projects will get much traction if co-ops don't work in OR (which they don't) and condominium are the only way to sell them.

There are good reasons why most cottage clusters or “pocket neighborhoods” developed elsewhere in the US are legally subdivisions, with lots owned fee simple by residents. To adopt a cottage code that bars this option would be short-sighted and of limited practical use. Fortunately, I think it's possible to allow for this option without getting mixed up with the intricacies of local subdivision codes.

Specific suggestions for how to do this are included on the following page, along with additional ideas for how to implement this portion of HB2001. I haven't tried to categorize these suggestions into ‘model code’, ‘minimum compliance’ or ‘best practice recommendation’ at this stage, but will be happy to provide thoughts on this as the cottage cluster portion of HB2001 gets further refined.

Please don't give up on the notion of allowing small homes on their own small lots. In fact, this is *exactly* the kind of housing we should be supporting to meet the demands of moderate-income homebuyers who have been largely shut out from the current new home market.

Thank you for your consideration,

Eli Spevak, Orange Splot LLC

Cottage Clusters

- Cap cottage footprint at 900sf, total living space at 1,200sf

Commentary: HB2001 provides no flexibility on the 900sf footprint cap. A 1,200sf home is larger than an ADU and can reasonably accommodate 3BRs

- Allow subdivision cottage clusters in any residential zone where this housing type is allowed.
 - In zones with lots where standard minimum lot are 5,000 square feet or less, there are no minimum sizes for cottage cluster lots.
 - In zones where standard minimum lots are greater than 5,000 square feet, lots newly created for cottage cluster homes must meet lot dimensional standards of the jurisdiction's smallest allowable lot type.

Commentary: This draws from the way corner duplex lots are provided for in Portland's zoning code – which conveniently doesn't require any changes to the subdivision code. Such a provision would allow small cluster homes to be built on separate lots. Builders would still have to navigate the local partition or subdivision process, as they would for any subdivision. But they wouldn't have to use condominium ownership to sell cottages separately.

- Match model code and minimum code requirements for parking to what applies for 3 or 4 plexes. Allow clustered parking.
- Exempt one pre-existing home (built before ____) per cottage cluster from size, height and perimeter setbacks.

Commentary: It's fairly common to find large homes on large lots. Cottage cluster development should be encouraged in such situations - without requiring it to be partitioned off. If an existing home is too tall, too many square feet, or a non-conforming distance to a property line, this should not disqualify the property on which it sits from being used for cottage cluster development, so long as the home gets preserved.

- Max. height: 25'

Commentary: Traditionally, cottages fall in scale somewhere between ADUs and single family homes. Capping height at 25' is mid-way between, effectively limiting cottages to 2 stories. This is the height limit found in Sisters', Bend's, and Langley's cottage cluster codes.

- Base code provisions apply for setbacks and landscape buffers around the perimeter of the site (although not necessarily for internal property lines, if subdivision clusters are allowed). If FAR is used locally, this would also apply to the cottage cluster as a whole.

Commentary: This ensures that from a neighboring property owner's perspective, a cottage cluster is no more intensive or proximate a use as would otherwise be allowed on the property. And it would probably have a reduced height limit.

- Max. homes per cluster: 16

Commentary: Some cottage cluster codes cap the number of homes in a cluster (e.g. 12 in White Salmon; 14 in Sisters, OR) and some don't cap the number at all (e.g. Bend).

- At least 50% of homes must face onto common landscaped open space (which could be a common green or within a shared court) that includes at least 400 square feet of grassy area, play area, or dedicated gardening space, which must be at least 15 feet wide at its narrowest dimension.

Commentary: This provision should only apply to subdivision cottage clusters if it's actually possible to achieve such a layout through a land division (e.g. through a 'common green' or 'common court' code – or ability to create commonly owned tracts). If it's not possible, this provision shouldn't apply.

- Accessory dwelling units shall not be permitted in cottage cluster developments

Commentary: A cottage cluster code is an alternative way of building more, smaller homes on a property. Adding ADUs would effectively 'double dip' on two types of density bonus. Bend's cottage cluster code has an ADU prohibition, presumably based on this same logic. Portland's current corner duplex provision similarly disallows ADUs.

- Allow – but do not require - a “common house” detached, covered, accessory structure in a cottage cluster containing shared kitchen facilities and/or guest bedroom(s), so long as it falls within height, setback, FAR (if used), and building coverage limits for the site. Such a building would not count towards the maximum allowed density so long as a covenant is recorded against the property stating that the structure is not a legal dwelling unit and will not be used as a primary dwelling.

Commentary: In some jurisdictions, a 'common house' with kitchen and sleeping facilities is treated as a dwelling unit. This means the builder pays SDCs or impact fees for the structure and it counts against maximum allowed density for the site. These costs significantly decrease the likelihood that such shared amenities ever get built. An alternative approach is to treat such a structure as a commercial structure. But this has its own complications & added expenses – since building code would treat it as a mixed occupancy structure and hence trigger full NFPA-13 sprinkling and associated 2" water service with accompanying quarterly fees in perpetuity. Covenanteeing the property could be a way to allow common houses without burdening them with these additional costs/regulations.

- Key final point!! Don't layer on additional restrictions often associated with cottage cluster codes that rarely, if ever, get used (e.g. min. covered porch areas, design restrictions, fences, ...)

Commentary: Many cottage cluster codes have rarely, if ever, been used. Although things might have changed, as of a couple years ago I'm pretty sure that every cottage cluster code in Oregon had been used exactly once or never at all. This is reminiscent of ADU codes from around the country with low utilization rates. Over-regulation may be a driving cause in both instances. In cities where regulations have been trimmed back on ADUs, numbers have typically increased. Given the public policy benefits of cottage cluster housing, it makes sense to reduce regulations so they are more likely to get developed as an alternate to traditional single family homes (which would be larger and more expensive). Any design restrictions (e.g. historic design, community design standards, street window glazing requirements...) that would apply to single family homes would also apply to cottage cluster homes. But additional design requirements specific to cottage cluster homes should be avoided.

From: Mary Kyle McCurdy [mailto:mkm@friends.org]

Sent: Friday, July 3, 2020 3:25 PM

To: Stuckmayer, Ethan <estuckmayer@dlcd.state.or.us>; Hallova, Anyeley <ahallova@dlcd.state.or.us>; zdilj@comcast.net

Cc: Taylor, Casaria <ctaylor@dlcd.state.or.us>; Mary Kyle McCurdy <mkm@friends.org>

Subject: Comments on methodology for "in areas"

Hi all-

At the HB 2001 TAC #7 meeting, there was extensive discussion about the methodology that should be used to apply the "in areas" language of HB 2001 to determine the geography on which the middle housing types beyond duplexes would be required to be allowed. The operative language from HB 2001 is:

"(2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

"(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings;"

After thinking back over the TAC and RAC discussions and reviewing the staff memo on this, other letters submitted, and the statute, we believe the "whittle away" approach is consistent with HB 201, and the "balloon" approach is not, as explained in the attached.

Thank you for your considerations of this.

Mary Kyle

Mary Kyle McCurdy

Deputy Director

1000 Friends of Oregon





July 3, 2020

To: Ethan Stuckmayer, Senior Planner of Housing Programs
HB 2001 RAC Co-Chairs, Commissioner Anyeley Hallova and Jerry Lidz

From: Mary Kyle McCurdy, Deputy Director, 1000 Friends of Oregon and RAC member

Re: HB 2001 Model Code for Metro & Large Cities – Defining “in areas”

At the June 25, 2020 meeting of the Technical Advisory Committee for HB 2001 regarding the Model Code for Metro & Large Cities, there was an extensive discussion about how to apply the bill’s use of the term “in areas” to determine where, and to what extent, the legislation contemplates that three- and four-plexes, townhomes, and cluster cottages should be located. HB 2001, Sec. 2(2)(a). The DLCD staff has described two methods for thinking about this determination – the “whittle down” and the “balloon” approaches.

Based on the language and intent of HB 2001, we believe that the “whittle down” approach should be used. We also believe that once the HB 2001 RAC and TAC actually start applying it, the results might ease some of the anxiety expressed at the June 25 meeting. In contrast, we believe starting with the “balloon” approach would not be consistent with HB 2001, and some of the arguments expressed for starting with it illustrate that inconsistency.

HB 2001 states that (emphasis added):

(2) Except as provided in *subsection (4)* of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district *shall allow* the development of:

- (a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and
- (b) a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

Subsection 4 describes the “except” part:

- (4) This section does not apply to:
 - (a) Cities with a population of 1,000 or fewer;
 - (b) Lands not within an urban growth boundary;

- (c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;
- (d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or
- (e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

That is the extent of lands to which (2)(a) - the middle housing with units beyond duplexes and which was the subject of the meeting - need not apply and, except perhaps for (c), these are readily mappable. That is the starting point from which "areas" could be "whittled away" though the provision in subsection (5):¹

(5)... Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals."

Subsection (5) describes the *only* basis on which middle housing could be excluded from any piece of land, regardless of whether one follows the "whittle away" or "balloon" approach.

The description provide by DLCD of "balloon" and some categories of exclusion described by some TAC members are not consistent, in our opinion, with HB 2001 and also do not make practical sense. DLCD describes the "balloon" as follows:

"The 'balloon' approach is based on locational services, such as public transit, existing higher density areas and mixed residential and commercial use zones. This approach would encourage middle housing development in categorical areas that are already higher density and have transportation or other services.

"This 'balloon' approach will allow middle housing types in areas that are already higher density and will most likely have services available to promote reduced dependence on auto travel."

However, DLCD noted, correctly, the "balloon" method has at least two problems: it has "equity implications" and it violates HB 2001's "clear and certain intent to provide more housing choice in historically exclusive residential areas."

It also has at least one other clear and significant legal obstacle: the *only* basis on which any "area" or parts of an area may be excluded through regulation is if it is necessary to comply with a "protective measure adopted pursuant to the statewide land use planning goals." That does *not* encompass excluding areas that, for example, are not near transit, are already near higher density, are based on some sort of census block calculation or school boundaries, or any other characteristic beyond (5). Not only are these not spoken to at all in (5), but they are

¹ Please note that Section 2(6)(b) provides that cities and counties may choose to allow any or all middle housing types in any of these areas.

based entirely on a static look at today – where do buses run now, what are today’s school boundaries, etc.... That is inconsistent with the intent of HB 2001 – and Goal 10 – to provide housing opportunities for all, today and tomorrow.

HB 2001 has already made the equity determination: middle housing is going to be allowed in all single-family neighborhoods. We recommend that the RAC and TAC start determining, based on (5), how to determine what protective measures would cause which areas, subareas, lots, or other types of “areas” to require regulation for some or all of the other types of middle housing beyond duplexes.