

# MIDDLE HOUSING MODEL CODE TECHNICAL ADVISORY COMMITTEE MEETING PACKET #8



**TO:** Middle Housing Model Code Technical Advisory Committee Members  
**FROM:** Ethan Stuckmayer, Senior Housing Planner  
**SUBJECT:** Model Code Technical Advisory Committee Meeting Packet #8

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Middle Housing Model Code Technical Advisory Committee Members,

Below, you will find information that will help you prepare for the Middle Housing Technical Advisory Committee (MCTAC) meeting scheduled for **August 4 from 9am- 12pm**. *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. The Zoom meeting information is also provided here:

Please review the information provided in this packet thoroughly, as we will have a full agenda and expect a robust discussion on Middle Housing Model Code structure and preliminary concepts.

*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 MCTAC members come to each meeting prepared having read the materials and ready to discuss model code topics in detail.

The primary objectives for MCTAC8 are to:

1. Review and discuss the Cottage Cluster and Townhome Parts of the Large and Metro Cities Model Code
2. Finalize the Duplex, Triplex, and Quadplex Parts of the Large and Metro Cities Model Code
3. Review Draft OAR 660-046 outlining minimum compliance standards, applicability, definitions, and compliance
4. Refine an added flexibility approach to defining “in areas”

Included in this packet are materials for your review that will inform the discussion at the next meeting. Please review these documents prior to the meeting on **August 4 from 9am – 12pm**.

## **MCTAC Meeting Packet #8 Materials List:**

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*NOTE: We have provided a discussion worksheet as packet item #4. This worksheet will mirror the discussion anticipated during the meeting. Also, Committee members will receive an email after the meeting with the link to a fillable discussion worksheet where they can submit comments and/or questions that we did not have time for or were otherwise missed.*

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**

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**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.*

# Middle Housing Model Code Technical Advisory Committee Meeting #8

August 4, 2020; 9:00 am – 12:00 pm

By Zoom Web Conference

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



## PROPOSED AGENDA

Middle Housing Model Code Technical Advisory Committee Meeting		
Time	Topic	Who
9:00 – 9:05 am	<b>Welcome, Opening Remarks, and Review Agenda</b>	<ul style="list-style-type: none"><li>• Jerry Lidz, LCDC</li><li>• Ethan Stuckmayer, DLCD</li><li>• Robert Mansolillo, DLCD</li></ul>
9:05 – 9:10 am	<b>TAC Member Introductions</b> <ul style="list-style-type: none"><li>• <i>Introduce yourself to the group</i></li><li>• <i>Name</i></li><li>• <i>Organization</i></li></ul>	<ul style="list-style-type: none"><li>• DLCD Staff</li><li>• Angelo Planning Group</li><li>• TAC Members</li></ul>
9:10 – 11:00 am	<b>Large and Metro Cities Draft Code &amp; Draft OAR</b> <ul style="list-style-type: none"><li>• <b>Review of Parts 1-4</b></li><li>• <b>Review Large and Metro City portion of OAR's</b></li></ul>	<ul style="list-style-type: none"><li>• Robert</li><li>• Matt Hastie, Angelo Planning Group</li></ul>
11:00 – 11:55 am	<b>"In Areas" discussion</b>	<ul style="list-style-type: none"><li>• DLCD Staff</li></ul>
11:55 am – 12:00 pm	<b>Next Steps and Wrap Up</b>	<ul style="list-style-type: none"><li>• Jerry</li><li>• Ethan</li><li>• Robert</li></ul>

**Middle Housing Model Code Technical Advisory Committee (MCTAC) Meeting #7**  
**June 25, 2020; 9am – 12pm**  
**Zoom Virtual Meeting**

**Key Insights Summary**

*“Whittle Away” Approach* – There was significant discussion on the MCTAC regarding the “whittle away” approach to defining “in areas” determined at the previous RAC meeting. Some TAC members indicated that the approach does not provide local jurisdictions sufficient flexibility to plan for housing in a manner that is appropriate to local context and meets the intent of HB 2001. Staff clarified that the intent of the approach is to develop a process that allows for local jurisdiction flexibility to accommodate examples raised by jurisdictions such as Wilsonville.

*Plex Feasibility Analysis* – TAC members expressed a variety of views from the feasibility analysis prepared by ECONW. Some members raised underlying assumptions that make the analysis less accurate, including omission of conversion/infill scenarios. Others note that the findings present implications for the Model Code and minimum compliance standards, given the limited ability for plexes to “pencil” except in hot markets.

*Townhouse Development Standards* – There is significant question on the TAC regarding the right development standards to facilitate the development of townhouses. Some TAC members note that certain standards, such as lot width, lot size, and frontage may not require any minimum at all as they are limited by other standards and physical limitations. Additionally, TAC members note that townhouses will likely need a maximum height of 35’ to be feasible in most scenarios. Finally, TAC members offered suggestions to design standards to ensure they provide maximum development flexibility.

*Plex Development Standards* – There is a question among TAC members as to whether FAR would have the effect of limiting building envelope to a greater extent than for a single-family detached unit. Staff clarified that FAR can increase the envelope in scenarios where the maximum lot coverage standard would limit FAR to a greater extent. Ensuring that the FAR in the Model Code does not hinder plex development is an important consideration. Additionally, staff should look into “alteration of a nonconforming use” to better accommodate SFD conversion.

## Meeting Notes

### Participants

- Alexis Biddle
- Amanda Ferguson
- Brian Martin
- Ellen Miller
- Kaarin Knudson
- Kol Peterson
- Jeremy Rogers
- Jerry Lidz
- Kelsey Zlevor
- Mark Rust
- Martha Fritzie
- Mary Kyle McCurdy
- Pauline Hardie
- Ryan Jennings
- Sarah Adams-Schoen
- Susan King
- Ted Reid
- David Martineau
- Erik Olson
- Lauren Sommers
- Kyle Macadam
- Savannah

### Staff/Consultants

- Ethan Stuckmayer
- Robert Mansolillo
- Sean Edging
- Samuel Garcia
- Kevin Young
- Emma Land
- Matt Hastie
- Kate Rogers
- Tyler Bump
- Becky Hewitt

### Public:

- Ariel Nelson
- Dan Pauly

### “In Areas” Discussion

Summary of the two approaches and confirmation of RAC policy decision for the “whittle away” approach.

- Brian: Indicates that the RAC indicated preference for “whittle away” but notes the limited options. Doesn’t feel talking through the memo is the best use of time. Believes that the local government should provide more input
- Susan: Do not agree with the BPS approach to “in areas”.
  - Staff: The intent of both approaches gives jurisdictions the ability how to define areas. The “whittle away” starts from a broader swath, but the rest is up to the city to justify how they want to “whittle away” further, the “balloon” is the same, but from a different base assumption.
- Brian: I disagree with the premise – that cities have to justify removing areas from allowing all housing types. The RAC wasn’t presented with an approach where a state sets expectations and cities decide where those are allowed. I want to present other ways to do it that meet the intent of the law. Memo provided three options – first includes an intent statement that allows cities to draw “bubbles” where middle housing is allowed. Second way is more specific without numerical standards, sets expectations for where those are allowed. Third way presents a numerical standard. Raise Wilsonville letter with new UGB expansion areas and master planning.

- Staff: Explanation of moving away from a numerical approach and moved to casting a wide net. Wilsonville example – “whittle away” would allow Wilsonville to make the case for Master Planned communities.
- Kol: We spent a lot of time talking about this on the RAC – my feeling is that this decision is made, and there are a lot of other topics with needed feedback. Keep comments brief.
- Mark: I think we do need to talk about this. I agree with Brian about looking at different approaches. We were presented with two options – I expressed more approach for the “whittle away” approach. Our City Council is interested in accommodating middle housing in all areas, but these approaches don’t accommodate that.
  - Staff: Request for further clarity on that topic.
  - Mark: Propose allow middle housing based on existing density standards. We’ve mapped the city to determine where middle housing would be permitted. We have a 4500 sq ft minimum for single family and now we would have to allow middle housing on that lot. If the state requires that we have to allow middle housing on smaller lots, we would not lower that lot size. In my mind, there’s a lot of confusion between the Model Code and minimum compliance standards.
- Jerry: It strikes me that the “whittle away” approach is more flexible than some folks think. So far staff have offered two and gave an example of a third. My question is “what are the available tools and process”. The draft mentions the city providing a justification. What kind of justification is needed and the process required? Mark’s comment about lot size might be one of those tools.
  - Staff: The example highlights that we can’t capture all the possible things that warrant not allowing middle housing, so the important point is outlining what the process for that review takes. We want to steer clear of coming up with “whittling tools”, so cities are not limited and can instead be creative.
- Jeremy: The only approach we can take is the direction you lay out. It has to be high level enough to work everywhere. I have a hard time seeing how anything other than the “whittle away” would implement the intent of the legislation. Thinking through the tools is important.
- Mary Kyle: I want to echo Jerry and Kol. I agree “whittle away” is the only approach and can provide flexibility. I want to echo Kol’s concern that this is a “technical” advisory committee and we’re talking about policy. I am very opposed to the approach in the Beaverton memo. It’s clear that increasing racial equity is through allowing diverse housing types in traditionally exclusive neighborhoods. I don’t see how the letter even comes close to meeting the intent of the bill.
- Martha: Agree with Mark and Brian. Intent of the law is to allow local jurisdictions to understand what areas are appropriate for higher middle housing types. The “whittle away” is the direction that we’re going. The two examples in here aren’t sufficient in allowing jurisdictions to determine what areas are reasonable for middle housing development.
- Brian: The Beaverton memo. I’m just as worried about segregation and perpetuating racial inequity. There are tools we can give DLCD to ensure cities are appropriately defining areas. If you give cities flexibility to approach this, if you take away minimum lot size and maximum density, then you’re not providing flexibility.
- Jerry: Statute says “areas” but we don’t have a definition. Possibilities include “Neighborhood organization boundaries” “School catchment areas” some other reasonable basis, it should be most or a substantial part of each area.

- Staff: From Section 2(2)A. “in areas zoned for residential use that allow for the development of detached single-family dwellings” To are reading, that would suggest middle housing is allowed in all of these areas, and regulations would take some of the parcels out.
- Mark: Want to suggest a potential area – census block group boundaries. This would help some of the income inequality issues. Mentioned DLCD has ability to adequately measure justification for whittling. A percentage is a good way of talking about that.
  - Staff: It’s a good thought, but the issue is “how do we avoid an arbitrary number”?
- Martha: The scenario that Jerry gave us would meet the intent. “In areas” you have to allow every single one of these housing types, it seems to me that we’re treating all of these the same (tris and quads). It may be appropriate to not allow a quad in certain places. This gets me to the “threshold/performance standard” it would be nice to toss that idea around. Last point is I think it’s extremely important to see a draft of the OAR.
- Sarah: I saw the RAC discussion as a policy discussion and DLCD as the implementing agency. Really what the RAC discussion boiled down to is whether the intent to require a presumption in favor or against middle housing. I do think Jerry’s scenario could be allowable. It’s not fair to say a particular approach is or isn’t allowable because it depends on the local jurisdictions’ findings. Clearly 2001 what about removing the exclusionary approach to single-family housing. Getting into these details and minimum standards is where we see flexibility.
- Ted: I think that most cities are operating in good faith, but we need them now to help us to imagine the other situations where the rationale for “whittling away” makes sense. Otherwise, we are left to our imaginations as to how exclusionary efforts would be put forward.

Staff: We will be bringing more of this outside of the meeting. What would be helpful is providing examples where areas make sense for carving out. The conversation for flexibility is inherent in this approach.

### **Economic Feasibility Analysis of Middle Housing**

Angelo/ECONW: Prepared an economic analysis of different zoning requirements on middle housing feasibility. Intent to get a rough feasibility – not intended to be parcel level/specific. These findings will be woven into the Model Code. Key findings include:

- FAR and parking impact the total leasable area for middle housing and affect feasibility. Additionally, higher FAR has diminishing returns.
- For small lots, a high FAR is important.
- Parking can be an issue if it limits building size, especially on smaller lots.
- In general, surface parking provides the best benefits to feasibility. Garage parking can reduce livable square footage.
- Restrictions on lot size makes middle housing difficult to compete with single-family detached development. Even a 1.5x minimum lot size has a negative impact on feasibility. Lots up to 2x may not be an issue in all communities, but could be in some communities.
- Recommendations to scale FAR to minimum lot size, set minimum lot size to same for SFD, and not require more than 1 space per development for small lot sizes.

Questions:

- Martha: Observation – interesting the graphs on page 9, showing that financial feasibility is not affected by parking spaces vs no parking spaces. Not having to provide any parking does not provide financial benefit. On parking, did you model anything that involved more than 2 off-street parking spaces? On minimum lot size, I would like to understand this better and wonder what variables change when going from 1 to 1.5x. If land cost is the only thing that varies, it's got to be more complicated than that.
  - ECO: Qualify that – garages impact feasibility by limiting total building area available. We modeled with the “most appropriate approach” around the ability to physically park units on a lot. If you have a fourplex on a 5000 sq ft lot, it is physically difficult to build a site to allow 1 space per unit. The issue is the space it takes up, especially on smaller or constrained sites. On lot size, as lot size increases, land costs go up making it less feasible in comparison to a single-family home.
  - Martha: Additional revenue.
    - ECO: We held the unit size constant, and the main revenue comes from the unit. Maybe additional landscaped area is worth a little bit, but not significant enough to affect rent significantly.
- Kol: Hot markets are where some of these fourplexes pencil. If minimum compliance allows jurisdictions to require 3 or 4 minimum parking spaces, it will result in many of these plexes to not physically fit. This points to a maximum of 2 required for middle housing, and maybe 1 on-street credit. Otherwise, geometry will not allow for middle housing development. Is it physically possible to allow three or four spaces on a lot? This is a critical conversation to determine whether we allow this poison pill.
  - Angelo: We did not show diagrams for all of these lots. None show more than two off-street parking spaces. In diagrams, you can on some lots but not on smaller or constrained lots. On 7500 sq ft lots, you could fit additional parking spaces. On 5000, it may be possible. It just starts to eat into the available footprint for the building.
- Mark: Comments build on lot size. On page 12, exhibit 5 – prevalence of lots by minimum lot size. Are those lot counts total or vacant?
  - ECONW: Total.
  - Mark: The table represents an interesting dynamic. It's a lot easier to get a fourplex on a 9,000 SF lot in Redmond than a 3,000 SF lot in Eugene. Eugene is closer to what Springfield is. Main point is that on page 2, the second paragraph did not evaluate the addition of units to a property. This whole analysis focuses on greenfield development. This doesn't match up with that table. The majority of middle housing opportunity is on infill lots with an existing SFD. That's a big gap in this analysis.
  - ECONW: It's true that this is narrowly focused, because it's harder to model infill, but it's also why we looked at all lots in a distributed area. It could be adding onto a site with an existing home. If a quadplex needs to add on to an existing SFD, they would still need 4x the amount of land, which is a large constraint.
  - Angelo: We were thinking about infill situations. In an infill situation, you typically can't acquire a quarter of an additional lot. If a city requires multiple, you always need to acquire a full additional lot. This analysis underestimates that impact.
  - Mark: I think this boils down to I don't think the legislation is trying to put tri- and quadplexes on existing single-family lots.



- Angelo: What you're seeing in these charts is that these housing types are very unlikely feasible even in hot markets. Anything cities do to make it more difficult makes it that less likely to be developed. We're thinking of standards that create unreasonable cost or delay, and that was the point of this analysis.
- Mark: Clearly land supply is an issue in every Oregon cities. There are not vacant lots available in most cities. It's very difficult to make these project pencil on vacant lots, whereas most of these will happen on infill lots. Saying that a minimum lot size cannot be larger than an SFD is based on this analysis, which I think is flawed.
- Martha: I agree with Mark. You need to keep in mind when we talk about minimum lot size, there are a lot of lots that are larger than the minimum lot size in the zone.
  - Becky: That's why we did that lot size distribution. We wanted to see how many would be the minimum. There's a real range. In some cases it's not a big deal, but in other cases it is.

### **Model Code Townhouses**

Angelo: Update on combined standards for middle housing.

- Martha: Is Goal 6 specifically excluded from this? Change to infrastructure lands – changes where middle housing is required. I am curious if there are areas that don't have and can't provide services. Going to throw out concern about the change to duplex definition in light of local flexibility.
  - Staff: It depends how a local jurisdiction regulates protections. Duplex is consistent with tri- and quad- definition. We maintain flexibility for jurisdictions to define a duplex as attached. A cottage cluster differs as it is smaller and "no fewer than four detached units per acre" it may be more. [review recording]
  - Mary Kyle: Current Model Code requires them all to be on a single lot. Is there not an ability to allow that to be divided for fee simple ownership. It's not prohibited by the law. The notion of including that option for ownership, which is something that has arisen for townhomes.
  - Angelo: Minimum compliance would allow that. For the model code, it is exceedingly difficult to develop one set of standards that would allow that given the different set back, cross access easement requirements, etc. The intent is to provide a basic set for local jurisdictions to take and even refine. The units can still be owned separately without dividing the underlying land.
  - Mary Kyle: That complexity has been reason for not moving in that direction, but if there isn't fee-simple, they are unlikely to be developed.
- Kol: FAR standard is going to inherently limit plexes to be smaller than single-family dwellings. Now that I understand that a plex will be smaller than a single-family house, I have changed my position on this. We don't require them for duplexes, McMansions, or townhouses, but we have decided this is appropriate for plexes. We should reconsider its role in the Model Code.
- Brian: Seeing a lot of changes based on previous comments, particularly on minimum compliance side. If minimum compliance says "no requirement but", that's a requirement. We should see the OARs. [Review recording 10:53am]

### **Townhouse Development Standards**

Angelo: Description of changes to the townhouse Model Code development options.

- Mark: On minimum lot size – the discussion for minimum compliance will build off of the Model Code. Minimum compliance mentions waiting on feasibility analysis. On GFA of 800 SF for option 3 – it seems a bit low. On density, having four units count as one seems appropriate. On height, we have contemplated on using “stories” which get problematic in hilly areas. If you went to three stories, is there a number associated (35’)?
  - Angelo: On unit size – we are not likely to do the same financial analysis. What we’ve done so far is look at townhome developments around the state. On unit size, the smallest we observed was 900 SF. Most townhomes tend to be 1200-1800 SF. A few where we saw larger ones. Larger than that are in higher priced residential neighborhoods in packs of two. On height, most codes say 30’ or 35’ feet and we agree that stories can be problematic.
  - Staff: The path of the Model Code will help determine the path of minimum compliance. It will be interesting to learn from architects on building height.
- Brian: I did want to look at Permitted Uses and Approval. “Outright” and “follow same approval process as single family” I am wondering about cases where an SFD is “conditional” or a “PUD”. Would these fight with each other? On number of units, definition of townhouses contains two units, so we may not need to say that in this section. On maximum density, Option 2 say four (4) townhouses count as a single unit. I don’t know what this is based on. On number 8, height isn’t the only way to affect volume, I know some cities with bulk plane from different directions. Might want to ensure there’s a minimum volume allowed in minimum compliance.
- Kol: Spoke with townhouse developers. They recommend no minimum lot size, frontage requirements. Plenty of examples of 14 ft and even 8 ft examples.
- Martha: I don’t think street frontage or lot width are necessary. I want to echo Brian that I do appreciate the work done to put more thought into articulating the minimum compliance column. On applicability, my concern is “only to clear and objective standards”. In minimum compliance it doesn’t have the alternative indicated. On minimum lot size, option 2 is more straightforward. Unit size is fine until people want to place additions, plus it includes a garage. Agree that the maximum density is confusing. Seems that’s an alternative to having a minimum lot size, which if you have the four unit doesn’t make a lot of sense.
- Kaarin: On height, a 35 foot height makes quite a lot of sense with that type of house for the reasons you mention, consistency with existing townhouse examples, and development flexibility. As we walk through how jurisdictions and the public need to come up to speed on the definition of each housing type relevant to HB 2001, how this information is communicated is critical. The graphic communication and information that Matt described is going to be absolutely critical for jurisdictions and the public to understand how these types will be translated. Being able to see a table of these standards and allow jurisdictions to fill in information around what exists to see how much latitude and flexibility exists, to help communicate what the most appropriate development options are for each site.
  - Angelo: Definitely test fits from SERA will be available after the meeting. Other graphics are in development.
- Pauline: Open space and landscaping, 400 SF seems like a lot of space devoted to planting standards when they want to do a patio/outdoor space.

## Townhouse Design Standards

Angelo: Updates to the proposed design standards options.

- Kaarin: In unit definition, with the recessed entry at a minimum of 3 ft – a covered entry of a particular dimension, maybe that’s the 36” in depth. I can think of examples where that would be far more effective in identifying units and not influential to the interior. For townhouses, it’s important to not prescribe that interior. Separate porch standard (typically raised platform) from a covered entry. This would allow a third option of an on-grade entry with a cover.
- Mark: Broad comment on design standards. If these regulations are unreasonable cost or delay in comparison to SFD. Want to highlight figure 1 showing shared access, Pauline’s comment mentioned allowing separated driveways. That flexibility would be important.
- Jeremy: HBA expressed concern about standards being unreasonable cost or delay. Why do we feel compelled to include these in the Model Code.
- Pauline: At bottom of packet, I provided a picture of a townhouse with separated driveways to demonstrate flexibility.

## Triplex and Quadplex Standards

Angelo: Description of changes to tri- and quadplex development and design standards.

- Kol: How is it that FAR standards would not make the plex smaller than the allowable SFD. The minimum compliance standard for off-street complex need to be ratcheted down for the minimum compliance.
- Mark: I disagree with ratcheting down minimum standards further to account for differences between jurisdictions. On-street parking credits also become problematic. On minimum lot size on defining “in areas” ties directly to minimum lot size – in allowing flexibility in defining “areas” when you tie our hands in other ways, there’s really not a lot of flexibility.
- Brian: Reiterate that if there are ways cities can use maximum density and minimum lot size and have a large percentage of lots in their area qualify, what’s wrong with that. Peer suggested that lots 5000 SF and below, FAR seemed somewhat low. It appears that the financial feasibility analysis that two parking spaces is not a problem. I am hoping for a rethink and analysis of how these influence each other.
  - Martha: Agree with Mark and Brian on lot sizes and parking
  - Pauline: I also agree with Mark on the lot sizes.
- Mark: On conversions of plexes, people have pointed to the Portland Airport Zone as an area that shouldn’t allow.
- Martha: On conversions, if you’re allowed to have a duplex or tri-, couldn’t you just build a new one? In the County, we have a process you can apply an “alteration of a nonconforming use” which would allow you to increase nonconformance.

## Cottage Cluster Concepts

Angelo: Overview of general concept and approach to cottage cluster standards. Insufficient time to talk through the proposed

Staff: Wrap up and next steps. In lieu of our last meeting, we will be shifting to asking for review and assistance through email throughout July and August. Now is the time to engage in those discussions. We will have upcoming RAC meetings to discuss these.

## #1

COMPLETE

**Collector:** Web Link 1 (Web Link)  
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**Time Spent:** 01:13:53  
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## Page 1: MCTAC Meeting #7 Discussion Worksheet

## Q1

DLCD Housing Team has proposed two options for defining “in-area”. The “whittle away” approach and the “balloon” approach. The RAC showed a strong preference to the “whittle away” approach to define “in areas”. There may be tweaks necessary to this approach. What specific suggestions do you have to make this approach more implementable?

I like the whittle away approach, but I think the MC and OARs need to be open to more whittling tools. The MC might include something like “binding agreements with other governmental entities if the agreement was signed before the effective date of [the statute? the Model Code?]”. Portland’s airport zone is a good example. The OAR should be more open-ended and allow cities to craft their own tools — subject to some limitations which will be hard to define. (See below.) But we’ve know all along that “areas” would be difficult to define.

## Q2

Under the “whittle away” approach, statewide planning goal-protected areas and areas with infrastructure constraints to serve higher middle housing types (i.e. “infrastructure constrained areas”) warrant restrictions on higher middle housing types. Are there other areas that cities should consider when thinking about where middle housing is acceptable?

See above re intergovernmental agreements. Maybe others as well; I’ll be interested to see what other folks suggest.

## Q3

Under the “whittle away” approach, a local government would identify additional areas that will restrict higher middle housing type allowance so long as there is a justifiable rationale for these exclusion. What specific aspects of the rationale should DLCD consider as part of a local government’s definition of middle housing areas?

The terms of the above question are confusing, because a city could not “identify additional areas” where higher middle housing is not allowed, because it has to allow quads, etc. “in all areas.”

I think the standards should be quite deferential, as the only statutory requirement is that a city allow that housing “in all areas.” The question is, What constraints does LCDC has legal authority to impose on the city’s authority? And, what constraints \_should\_ it impose?

I suggest three constraints: (1) The city’s limitations on where higher middle housing is allowed must have a reasonable or reasoned basis. (2) the limitations should have an equitable impact — i.e., not exclude higher middle housing from opportunity areas. I think this should be tied to the HPS. (3) The city should not exclude higher middle housing from more than \_\_% of any “area.”

I think it is impossible to implement HB 2001 without some definition of “area.” I know that’s a challenge, but so far I haven’t even seen a proposal. Try offering cities a menu of options and let them proceed. Don’t let the perfect prevent the good.

**Q4**

Recommendations – The analysis conducted by ECONorthwest and SERA Architects found that three development code provisions played major roles in the ultimate feasibility of triplexes and quadplexes: minimum lot size, allowable FAR, and off-street parking requirements. The model code and minimum compliance standards have been updated to reflect the findings of this analysis. What specific questions related to standards for triplexes and quadplexes still remain for you after reading this analysis?

I think the ECO/SERA findings are very helpful, and I generally agree that those are the three logical factors to address. However, I do NOT agree that any development standard that increases costs is “unreasonable,” as implied in a few of the comments in the recommended OARs. Please do not conflate “additional cost” with “unreasonable cost.” “Unreasonable” means without a reasonable basis, not “we don’t think it’s a good idea.”

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**Q5**

Townhome Feasibility Analysis – A similar analysis to the analysis ECONorthwest and SERA Architects conducted for Triplexes and Quadplexes will be conducted for Townhomes. What specific standards do you feel ECONorthwest should study in this analysis for townhomes?

See comments below on draft MC for townhomes.

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**Q6**

Definitions (memo pages 3-6) – “Goal Protected Lands” and “Infrastructure Constrained Lands” definition has changed to represent the “whittle away” approach to defining areas in which middle housing (except duplexes) is not allowed. Do you agree with the language in either the model code or minimum compliance?

Please see comments under questions 1-3 above. Generally, I agree with only a few whittling tools for the model code, but I think the OARs should be much more open-ended to reflect legislative intent to give cities flexibility so long as higher middle housing is allowed at least somewhere in every “area.” However, I think we also need standards that prevent a city from limiting higher middle housing to (e.g.) only two square blocks in an “area” that’s 50 square blocks in size.

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**Q7**

Development Standards (memo page 10-14) – 3. Minimum Lot Size – 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 applies to both the model code and minimum compliance. Do you agree with this approach? If no, please describe how a standard requiring a different minimum lot size would not cause unreasonable cost or delay to the development of a triplex or quadplex.

I disagree with this approach in the minimum compliance rules.

I also am puzzled why the MC defers to the existing SFD minimum lot size regardless of what that minimum is. If a city’s minimum lot size is 3000 square feet, a quad has a different impact on the neighborhood and adjacent lots than if the minimum lot size is 7000 sq ft. Maybe FAR standards will take care of that, but I don’t have enough experience to visualize that.

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**Q8**

Development Standards (memo page 10-14) – 8. Regulating Scale/Bulk – Maximum Floor Area Ratio (FAR) was the preferred choice to regulate scale and bulk of buildings with an added option to scale the allowable FAR based on the minimum lot size in the zone, this would have the effect of allowing higher FAR in some zones. Do you have specific objections to this approach? If yes, what changes are appropriate to make to the FAR standard?

Generally, I agree that FAR seems to be the most workable. Be careful that the OARs are not too restrictive.

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**Q9**

Development Standards (memo page 10-14) – 9. Off-Street Parking – A fourth option has been provided for triplex and quadplex off-street parking to reflect the findings of the feasibility analysis. Which of these options do you prefer?

I think I like Option 4 best, but I'm not sure what "per development" means. I see no justification for Option 1, especially in light of the ECO/SERA analysis,

I still object to the Model Code, Option 2, requiring a city to grant credit for on-street parking. It's not LCDC's purview to lock in how a city defines how its streets are used; also, we've heard from at least two cities that they have intentionally chosen narrow streets, with off-street parking required, based on analysis of total costs and how those costs are allocated between developers and taxpayers; LCDC should respect those choices.

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**Q10**

Design Standards (memo page 14-18) – 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?

I am generally comfortable with the proposed design standards for the Model Code, though I'm puzzled about why we are not concerned about the additional costs here; that's especially true when compared to the expressed rationale (too costly) for the severe limitations on required off-street parking. The requirement in the Model Code not to place a garage closer to the street than the main part of the house is a prime example: it adds costs for aesthetic reasons at the cost of efficient use of lot space. That seems contrary to all the concern about minimum lot size and cost of paving a portion of the lot to accommodate cars.

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**Q11**

Development Standards (memo page 19-24) – 3. Minimum Lot Size – Two options for minimum lot size are presented. 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. Option 1, a flat rate has been removed. Which of these options would be most applicable for a model code?

I think either Option 2 or 3 is workable, and I defer to others as to which would work better.

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**Q12**

Development Standards (memo page 19-24) – Density. Two options are provided to determine how or if density should be used to regulate siting and design of townhomes. Which approach do you prefer?

No opinion.

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**Q13**

Development Standards (memo page 19-24) – 10. Off-Street Parking – Three options are proposed for standards related to off-street parking. Of these, which is your preferred option?

One per unit is good,

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**Q14**

Development Standards (memo page 19-24) – Are there other items or options listed in Development Standards that you would like to provide feedback on?

I like the “unit definition” concept. I think it’s more important than the entry standards.

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**Q15**

Design Standards (memo page 24-27) – 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?

The latter.

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**Q16**

Cottage Clusters - 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?

No opinion.

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**Q17**

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

If the Model Code has a maximum, it should be fairly high — 15? 20?

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**Q18**

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

Yes, I think unit size should be limited in the Model Code. I would suggest 1500 square feet. That looks to be approximately what the sample photos in the staff report would suggest — i.e., that a second story be no more than 2/3 the floor area of the first floor. And no third story: higher than two stories is no longer a cottage.

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**Q19**

Cottage Clusters - What do you think an appropriate off-street parking ratio is for cottage cluster developments?

One space per unit.

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**Q20**

Other questions or comments:

The Model Code and OARs still need to have some definition or guidance as to what an “area” is, because that’s the basic concept for how much and where cities can restrict higher middle housing. Very tough issue, but still needs to be addressed.

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## #2

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, June 30, 2020 4:15:52 PM  
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**Time Spent:** 00:02:38  
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## Page 1: MCTAC Meeting #7 Discussion Worksheet

## Q1

DLCD Housing Team has proposed two options for defining “in-area”. The “whittle away” approach and the “balloon” approach. The RAC showed a strong preference to the “whittle away” approach to define “in areas”. There may be tweaks necessary to this approach. What specific suggestions do you have to make this approach more implementable?

These comments are about everything but duplexes. Please refer to the June 15 letter from Brian Martin at the City of Beaverton regarding the “areas” approach. Plus Wilsonville’s letter and comments from Springfield and Clackamas County in the TAC. Cities should be able to define areas and then determine where middle housing types (besides duplexes) are allowed within those areas. The state should have tools to ensure HB2001 expectations are being met.

It is possible there is a misunderstanding at work here as well. I think “whittling away” entire areas of a city is less likely to be needed by jurisdictions. It is still possible, as the City of Portland example shows. It also might be possible that a city could decide to not allow additional development in areas that have seen a lot of involuntary displacement (not weighing in on whether that is the best approach).

It is more likely, though, that cities are going to want to allow middle housing throughout the city in “land zoned for residential use” but use development standards to control where the housing types are allowed. In effect, that would mean which lots. It is determining where the middle housing types are allowed within an area rather than trying to exclude an area.

That said, jurisdictions should have no expectation that they can get away with excluding middle housing from wealthy neighborhoods or furthering segregation. The concepts in the June 15 City of Beaverton letter address racial equity and segregation and are not intended to let cities thwart the law.

DLCD staff have asked cities to suggest reasons why cities might want to “whittle away.” DLCD staff and its consultants can also contribute ideas. That is a useful question, but it is only part of the conversation. Let’s focus on how we can allow cities flexibility; set strong expectations for equity, reduced segregation and unit production; and provide DLCD the tools its needs to ensure all cities comply with the law and its intent.

Can DLCD staff and consultants do additional work and come up with draft language on that for the TAC, RAC and decision-makers to consider?

One added benefit of that is cities that have been excelling in this area can retain their current approach that is working rather than spending time rewriting their code to fit the one solution DLCD is proposing that does not consider cities using minimum lot size, maximum density, PUDs, master plans or other methods that generate results consistent with the letter and intent of HB2001.

**Q2**

Under the “whittle away” approach, statewide planning goal-protected areas and areas with infrastructure constraints to serve higher middle housing types (i.e. “infrastructure constrained areas”) warrant restrictions on higher middle housing types. Are there other areas that cities should consider when thinking about where middle housing is acceptable?

Please see comments above.

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**Q3**

Under the “whittle away” approach, a local government would identify additional areas that will restrict higher middle housing type allowance so long as there is a justifiable rationale for these exclusion. What specific aspects of the rationale should DLCD consider as part of a local government’s definition of middle housing areas?

Please see comments above. There are likely limited cases where carving out certain areas of land zoned for residential use. Cities also should be allowed the flexibility to have development standards that address where middle housing types are allowed and how they are allowed within an area.

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**Q4**

Recommendations – The analysis conducted by ECONorthwest and SERA Architects found that three development code provisions played major roles in the ultimate feasibility of triplexes and quadplexes: minimum lot size, allowable FAR, and off-street parking requirements. The model code and minimum compliance standards have been updated to reflect the findings of this analysis. What specific questions related to standards for triplexes and quadplexes still remain for you after reading this analysis?

The site plans provided by DLCD only provided a couple two-story options and did not include any three-story options, which is not necessarily in keeping with trends. Beaverton has seen lot sizes shrink and building square footage increase over time, so taller homes are more common. It is likely triplexes and quadplexes would follow the same pattern. The Residential Development Patterns report ([www.BeavertonOregon.gov/HOP](http://www.BeavertonOregon.gov/HOP)) also has example projects from recent years that were actually built. If the feasibility analyses were based on one-story quadplexes, I’m not sure that is the most realistic choice, although I’m eager to learn if DLCD or its consultants have recent trend information in regards to newer triplexes and quadplexes.

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**Q5**

**Respondent skipped this question**

Townhome Feasibility Analysis – A similar analysis to the analysis ECONorthwest and SERA Architects conducted for Triplexes and Quadplexes will be conducted for Townhomes. What specific standards do you feel ECONorthwest should study in this analysis for townhomes?

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## Q6

Definitions (memo pages 3-6) – “Goal Protected Lands” and “Infrastructure Constrained Lands” definition has changed to represent the “whittle away” approach to defining areas in which middle housing (except duplexes) is not allowed. Do you agree with the language in either the model code or minimum compliance?

There might be some problems with definitions. I took a look at ORS 92.10.

In the model code, “Lot or parcel” is defined as “any legally created unit of land.” The term “lot” and the term “parcel” are also defined in ORS92.10. Would it make more sense to use the ORS definitions? If not, what will it mean to have different definitions?

In ORS 92.10, it establishes the term “lawfully established unit of land.” Quoting below:

(3)(a) “Lawfully established unit of land” means:

(A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

(B) Another unit of land created:

(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

(b) “Lawfully established unit of land” does not mean a unit of land created solely to establish a separate tax account.

First, having two terms (“lawfully established unit of land” and “any legally created unit of land”) that are so close in wording with different meanings is problematic. As one of our city attorneys said, lawyers sometimes focus on small discrepancies in statutory language, and this could result in a lot of squabbling in the future over basically nothing.

Second, during the platting process, tracts are often established that are non-buildable because they are shared parking lots for the site, open space tracts or some other non-building use. These are things that appear to be contemplated in ORS 92.10(3)(a)(B)(ii). The definition of “Lot or parcel” in the model code might be inadvertently requiring cities to allow duplexes and other middle housing on those non-buildable tracts. Put another way, the phrase “any legally created unit of land” could unintentionally include tracts (i.e., units of land in a subdivision or partition that are set aside for resource protection or other non-residential uses). The administrative rules would benefit from clarification that tracts, though lawfully established (or legally created) are not intended to be subject to the same requirement as lots or parcels that they be available for development of duplexes, etc.

For the minimum compliance section, some of the definitions (“Lot or parcel” and “Townhouse,” for example) say a jurisdiction’s code must be “similar to.” This could lead to a city’s code be overwritten or invalidated without a reason. This is especially true because jurisdictions’ definitions often are written to apply to many different parts of the code and often have additional sentences that cover different circumstances. Instead, perhaps minimum compliance could have a performance standard that says a jurisdiction’s definition cannot get in the way of implementing HB2001. Rather than the definition being “similar” in wording, it should be similar in effect.

**Q7**

Development Standards (memo page 10-14) – 3. Minimum Lot Size – 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 applies to both the model code and minimum compliance. Do you agree with this approach? If no, please describe how a standard requiring a different minimum lot size would not cause unreasonable cost or delay to the development of a triplex or quadplex.

The minimum compliance is very specific and does not give cities flexibility. See the applicability section regarding cities being allowed to craft criteria that determine where these are allowed within areas. See also the Beaverton memo that provides a different way to allow cities more discretion over how areas are defined and how housing types are allowed within those areas. If a jurisdiction can use a different approach to minimum lot size and the outcome is positive, reduces segregation, promotes racial equity and allows different housing types, why would the minimum compliance prevent it.

The same comment applies to maximum density.

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**Q8**

Development Standards (memo page 10-14) – 8. Regulating Scale/Bulk – Maximum Floor Area Ratio (FAR) was the preferred choice to regulate scale and bulk of buildings with an added option to scale the allowable FAR based on the minimum lot size in the zone, this would have the effect of allowing higher FAR in some zones. Do you have specific objections to this approach? If yes, what changes are appropriate to make to the FAR standard?

Beaverton's Residential Development Patterns report shows the many different ways triplexes and quads have been and can be built, and it would be helpful to know what DLCD is preventing and allowing through its model code or minimum compliance standards. Regarding maximum FAR, the standards are likely still too low still too low if one wants to allow a 3-story structure for those less than 5,000 square feet and especially for those closer to 3,000 square feet.

Cities have different approaches to accessory structures. How do accessory structures and cities different codes about accessory structures play into the FAR maximums?

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**Q9**

Development Standards (memo page 10-14) – 9. Off-Street Parking – A fourth option has been provided for triplex and quadplex off-street parking to reflect the findings of the feasibility analysis. Which of these options do you prefer?

The last TAC packet, on Page 53, said, "Our analysis shows that the cost of providing parking (up to 2 spaces total for a triplex or a fourplex) is not in itself a major issue for feasibility." Is there an unreasonable cost justification for the model code requiring fewer than two spaces?

The feasibility analysis also was based on assumptions of lower FAR maximums. Now that the proposed FAR maximums have increased, the impacts of parking on feasibility are likely less than the analysis would suggest. Will the feasibility analysis be updated?

The minimum compliance section for parking should include language that allows jurisdictions to deal with specific issues, such as streets that were built with no parking, units with three or more bedrooms or other atypical situations that might require additional minimum parking requirements.

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**Q10**

Respondent skipped this question

Design Standards (memo page 14-18) – 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?

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**Q11**

Development Standards (memo page 19-24) – 3. Minimum Lot Size – Two options for minimum lot size are presented. 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. Option 1, a flat rate has been removed. Which of these options would be most applicable for a model code?

Permitted Uses and Approval Process:

Requiring townhomes to be permitted “outright” in the minimum compliance is not necessary and might not cover all situations. For example, there could be a situation where single-family detached units are not permitted outright. It also is not necessary if the minimum compliance specifies the same approval process as single-family detached structures. This should also specify that jurisdictions do not have to allow townhomes on every lot.

Minimum lot width. Probably not necessary.

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**Q12**

Development Standards (memo page 19-24) – Density. Two options are provided to determine how or if density should be used to regulate siting and design of townhomes. Which approach do you prefer?

Maximum density: It is not clear how Option 2 works. If four units is one unit, what is the maximum density? Underlying zone in the city?

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**Q13**

Development Standards (memo page 19-24) – 10. Off-Street Parking – Three options are proposed for standards related to off-street parking. Of these, which is your preferred option?

Driveway access and parking. Why does model code include these provisions? What is the reason for not allowing each townhome to have its own driveway?

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**Q14**

Respondent skipped this question

Development Standards (memo page 19-24) – Are there other items or options listed in Development Standards that you would like to provide feedback on?

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**Q15**

Design Standards (memo page 24-27) – 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?

Overall, for all housing types, the state should use whatever method is effective to set expectations about outcomes and allow cities flexibility to implement HB2001 in their communities. The language should allow cities to address context, public engagement and local needs while ensuring DLCD has tools it needs to ensure cities are implementing HB2001 in a way that reduces residential segregation and promotes racial equity.

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**Q16**

Respondent skipped this question

Cottage Clusters - 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?

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**Q17**

Respondent skipped this question

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

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**Q18**

Respondent skipped this question

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

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**Q19**

Respondent skipped this question

Cottage Clusters - What do you think an appropriate off-street parking ratio is for cottage cluster developments?

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**Q20**

Respondent skipped this question

Other questions or comments:

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## #3

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Wednesday, July 01, 2020 9:59:07 AM  
**Last Modified:** Wednesday, July 01, 2020 12:53:48 PM  
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## Page 1: MCTAC Meeting #7 Discussion Worksheet

## Q1

DLCD Housing Team has proposed two options for defining “in-area”. The “whittle away” approach and the “balloon” approach. The RAC showed a strong preference to the “whittle away” approach to define “in areas”. There may be tweaks necessary to this approach. What specific suggestions do you have to make this approach more implementable?

cities with master planning requirements should be able to master plan the middle housing if it meets the intent of HB 2001. The City of Bend has the following requirements.

BDC Minimum standards are as follows:

- i. RL Comprehensive Plan Designation. At least 50 percent of the maximum gross density of the RL Comprehensive Plan designation, with two- and three-family housing, attached single-family townhomes and/or multifamily residential housing units comprising at least 10 percent of total housing units.
- ii. RS Comprehensive Plan Designation. At least 70 percent of the maximum gross density of the RS Comprehensive Plan designation, with two- and three-family housing, attached single-family townhomes, and/or multifamily residential housing units comprising at least 10 percent of total housing units.
- iii. RM Comprehensive Plan Designation. At least 60 percent of the maximum gross density of the RM Comprehensive Plan designation, with two- and three-family housing, attached single-family townhomes, and/or multifamily residential housing units comprising at least 67 percent of total housing units.
- iv. RH Comprehensive Plan Designation. The minimum density of the RH Comprehensive Plan designation applies. Single-family detached housing is not permitted in the RH Zone.

In addition, several expansion areas (areas outside of city limits but within the UGB) have housing mix requirements in the Comprehensive Plan that they need to comply with.

## Q2

Under the “whittle away” approach, statewide planning goal-protected areas and areas with infrastructure constraints to serve higher middle housing types (i.e. “infrastructure constrained areas”) warrant restrictions on higher middle housing types. Are there other areas that cities should consider when thinking about where middle housing is acceptable?

Airport Imaginary Surfaces



**Q3**

Under the “whittle away” approach, a local government would identify additional areas that will restrict higher middle housing type allowance so long as there is a justifiable rationale for these exclusion. What specific aspects of the rationale should DLCD consider as part of a local government’s definition of middle housing areas?

Transect areas to provide buffers for wildfire and wildlife. Here is a policy in the Bend Comprehensive Plan for an expansion area.

11-101 For the West Area, shown on Figure 11-4, the central planning concepts are to: provide a limited westward expansion that complements the pattern of complete communities that has begun with Northwest Crossing due to the existing concentration of schools, parks, commercial and employment lands; and create a transect from higher densities along Skyline Ranch Road to lower density and open space along the western edge in this area which approaches National Forest land and park open spaces, in order to provide buffers for wildlife and wildfire.

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**Q4**

Recommendations – The analysis conducted by ECONorthwest and SERA Architects found that three development code provisions played major roles in the ultimate feasibility of triplexes and quadplexes: minimum lot size, allowable FAR, and off-street parking requirements. The model code and minimum compliance standards have been updated to reflect the findings of this analysis. What specific questions related to standards for triplexes and quadplexes still remain for you after reading this analysis?

What was the average unit size that was considered when doing the analysis?

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**Q5**

**Respondent skipped this question**

Townhome Feasibility Analysis – A similar analysis to the analysis ECONorthwest and SERA Architects conducted for Triplexes and Quadplexes will be conducted for Townhomes. What specific standards do you feel ECONorthwest should study in this analysis for townhomes?

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**Q6**

Definitions (memo pages 3-6) – “Goal Protected Lands” and “Infrastructure Constrained Lands” definition has changed to represent the “whittle away” approach to defining areas in which middle housing (except duplexes) is not allowed. Do you agree with the language in either the model code or minimum compliance?

No comment

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**Q7**

Development Standards (memo page 10-14) – 3. Minimum Lot Size – 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 applies to both the model code and minimum compliance. Do you agree with this approach? If no, please describe how a standard requiring a different minimum lot size would not cause unreasonable cost or delay to the development of a triplex or quadplex.

scale approach

If the model code requires same lot sizes as single-family detached dwellings, there should be exceptions for different types of single-family detached developments. For example, the City of Bend just finished drafting amendments to the Bend Development Code to allow small homes (maximum of 800 square feet) on 1,500 square foot lots. These lots shouldn't be required to allow a triplex or a fourplex.

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**Q8**

Development Standards (memo page 10-14) – 8. Regulating Scale/Bulk – Maximum Floor Area Ratio (FAR) was the preferred choice to regulate scale and bulk of buildings with an added option to scale the allowable FAR based on the minimum lot size in the zone, this would have the effect of allowing higher FAR in some zones. Do you have specific objections to this approach? If yes, what changes are appropriate to make to the FAR standard?

Support FAR but need to make sure that there is still room onsite to store stormwater. For example, Bend has trouble maintaining stormwater on a 4,000 square foot site with 0.6 FAR.

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**Q9**

Development Standards (memo page 10-14) – 9. Off-Street Parking – A fourth option has been provided for triplex and quadplex off-street parking to reflect the findings of the feasibility analysis. Which of these options do you prefer?

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. (draft OAR 660-046-0105.5.b for Med Cities)

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**Q10**

Design Standards (memo page 14-18) – 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?

1

**Q11**

Development Standards (memo page 19-24) – 3. Minimum Lot Size – Two options for minimum lot size are presented. 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. Option 1, a flat rate has been removed. Which of these options would be most applicable for a model code?

2

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**Q12**

Development Standards (memo page 19-24) – Density. Two options are provided to determine how or if density should be used to regulate siting and design of townhomes. Which approach do you prefer?

1

---

**Q13**

Development Standards (memo page 19-24) – 10. Off-Street Parking – Three options are proposed for standards related to off-street parking. Of these, which is your preferred option?

one space per unit

Support 505 on street credit

what about streets with no on-street parking? What is sub-standard street with no on-street parking? Need definition for a sub-standard street.

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**Q14**

Development Standards (memo page 19-24) – Are there other items or options listed in Development Standards that you would like to provide feedback on?

There shouldn't be required open space or landscaping requirements. 1

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**Q15**

Design Standards (memo page 24-27) – 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?

1

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**Q16**

Cottage Clusters - 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?

Regulate density based on size. Bend has the following.

- . Minimum Density. The minimum density for CHDs is as follows:
    - a. RS and RM-10 Districts: four dwelling units per gross acre.
    - b. RM District: 12 dwelling units per gross acre.
  - 2. Maximum Density. The maximum density must not exceed that of the relevant zoning district.
  - 3. Maximum Density Calculation. RS, RM-10 and RM density calculation is based on the following floor area:
    - a. Dwelling units 600 square feet or smaller: 0.25 of a dwelling unit.
    - b. Dwelling units 601 to 1,200 square feet: 0.50 of a dwelling unit.
  - 4. Exception to Density Maximums. When affordable housing is proposed the provisions of BDC 2.1.600(D) may be applied.
- 

**Q17**

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

As long as they meet density then the # shouldn't be regulated.

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**Q18**

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

Yes. 1,200 square feet maximum.

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**Q19**

Cottage Clusters - What do you think an appropriate off-street parking ratio is for cottage cluster developments?

one parking space per cottage unit

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**Q20**

Respondent skipped this question

Other questions or comments:

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## #4

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
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Page 1: MCTAC Meeting #7 Discussion Worksheet

**Q1**

DLCD Housing Team has proposed two options for defining “in-area”. The “whittle away” approach and the “balloon” approach. The RAC showed a strong preference to the “whittle away” approach to define “in areas”. There may be tweaks necessary to this approach. What specific suggestions do you have to make this approach more implementable?

Beyond goal-protected areas and infrastructure-constrained areas, we need cities and counties to make constructive suggestions here. While I understand their desire for flexibility, I don't think we can meet the intent of the law by just giving them complete discretion.

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**Q2**

Under the “whittle away” approach, statewide planning goal-protected areas and areas with infrastructure constraints to serve higher middle housing types (i.e. “infrastructure constrained areas”) warrant restrictions on higher middle housing types. Are there other areas that cities should consider when thinking about where middle housing is acceptable?

See comment above.

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**Q3**

Under the “whittle away” approach, a local government would identify additional areas that will restrict higher middle housing type allowance so long as there is a justifiable rationale for these exclusion. What specific aspects of the rationale should DLCD consider as part of a local government's definition of middle housing areas?

Health and safety. Environmental constraints.

I don't think arbitrary rationales like “just corner lots” cuts it. Something like that would have inequitable impacts, focusing middle housing in locations with more car traffic.

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**Q4**

Recommendations – The analysis conducted by ECONorthwest and SERA Architects found that three development code provisions played major roles in the ultimate feasibility of triplexes and quadplexes: minimum lot size, allowable FAR, and off-street parking requirements. The model code and minimum compliance standards have been updated to reflect the findings of this analysis. What specific questions related to standards for triplexes and quadplexes still remain for you after reading this analysis?

Does requiring more than 2 parking spots per development (per triplex or fourplex) generally make those developments infeasible? Do FARs in the model code need to be increased?

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**Q5**

Townhome Feasibility Analysis – A similar analysis to the analysis ECONorthwest and SERA Architects conducted for Triplexes and Quadplexes will be conducted for Townhomes. What specific standards do you feel ECONorthwest should study in this analysis for townhomes?

Thresholds for parking that make developments feasible or not.

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**Q6**

Definitions (memo pages 3-6) – “Goal Protected Lands” and “Infrastructure Constrained Lands” definition has changed to represent the “whittle away” approach to defining areas in which middle housing (except duplexes) is not allowed. Do you agree with the language in either the model code or minimum compliance?

Generally, yes.

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**Q7**

Development Standards (memo page 10-14) – 3. Minimum Lot Size – 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 applies to both the model code and minimum compliance. Do you agree with this approach? If no, please describe how a standard requiring a different minimum lot size would not cause unreasonable cost or delay to the development of a triplex or quadplex.

I agree with this approach.

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**Q8**

Development Standards (memo page 10-14) – 8. Regulating Scale/Bulk – Maximum Floor Area Ratio (FAR) was the preferred choice to regulate scale and bulk of buildings with an added option to scale the allowable FAR based on the minimum lot size in the zone, this would have the effect of allowing higher FAR in some zones. Do you have specific objections to this approach? If yes, what changes are appropriate to make to the FAR standard?

I agree with scaling FARs in the model code. Otherwise, it appears that we may create an obstacle to triplex and fourplex development.

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**Q9**

Development Standards (memo page 10-14) – 9. Off-Street Parking – A fourth option has been provided for triplex and quadplex off-street parking to reflect the findings of the feasibility analysis. Which of these options do you prefer?

I strongly support option 1 (no parking required in model code). Builders will still be able to put in parking where feasible. I don't see a rationale for the state to require parking in the model code (in light of the intent of HB 2001 and the executive order on greenhouse gases).

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**Q10**

Design Standards (memo page 14-18) – 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?

Whichever creates the fewest design regulations. I'm not clear on which option does that... maybe 2.

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**Q11**

Development Standards (memo page 19-24) – 3. Minimum Lot Size – Two options for minimum lot size are presented. 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. Option 1, a flat rate has been removed. Which of these options would be most applicable for a model code?

I lean towards option 2.

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**Q12**

Respondent skipped this question

Development Standards (memo page 19-24) – Density. Two options are provided to determine how or if density should be used to regulate siting and design of townhomes. Which approach do you prefer?

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**Q13**

Development Standards (memo page 19-24) – 10. Off-Street Parking – Three options are proposed for standards related to off-street parking. Of these, which is your preferred option?

Option 1

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**Q14**

Respondent skipped this question

Development Standards (memo page 19-24) – Are there other items or options listed in Development Standards that you would like to provide feedback on?

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**Q15**

Design Standards (memo page 24-27) – 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?

same comment as for triplexes and fourplexes

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**Q16**

Respondent skipped this question

Cottage Clusters - 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?

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**Q17**

Respondent skipped this question

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

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**Q18**

Respondent skipped this question

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

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**Q19**

Cottage Clusters - What do you think an appropriate off-street parking ratio is for cottage cluster developments?

Don't require parking in model code.

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**Q20**

Respondent skipped this question

Other questions or comments:

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## #5

COMPLETE

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Page 1: MCTAC Meeting #7 Discussion Worksheet

## Q1

DLCD Housing Team has proposed two options for defining “in-area”. The “whittle away” approach and the “balloon” approach. The RAC showed a strong preference to the “whittle away” approach to define “in areas”. There may be tweaks necessary to this approach. What specific suggestions do you have to make this approach more implementable?

I am frustrated that we are moving backwards on this conversation. I thought DLCD had already established that middle housing was to be everywhere, less the hazard/protected properties. Why are we talking about this again so late in the game?

Middle housing should be allowed by right on all residential properties, as was the intent of the legislation.

‘Whittle away’ is definitely the better approach. The next step is to define what permissible, clear, and objective standards cities can use in their minimum compliance standards, with an clear-eyed understanding a jurisdiction’s citizens, planning staff, or electeds will undoubtedly do whatever they can do wiggle their way out of allowing middle housing near them. DLCD’s job is to put objective sideboards on what permissible criterion cities can use to wiggle out of middle housing.

For one thing, existing HOAs may not allow middle housing. So, there’s always an escape from middle housing in the form of HOAs, which are quite dominant in terms of new development regimes. But, in non-HOAs, HB 2001 compels DLCD to make middle housing as viable as possible in terms of the development regulations.

-Kol

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## Q2

Under the “whittle away” approach, statewide planning goal-protected areas and areas with infrastructure constraints to serve higher middle housing types (i.e. “infrastructure constrained areas”) warrant restrictions on higher middle housing types. Are there other areas that cities should consider when thinking about where middle housing is acceptable?

Not sure.

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**Q3**

Under the “whittle away” approach, a local government would identify additional areas that will restrict higher middle housing type allowance so long as there is a justifiable rationale for these exclusion. What specific aspects of the rationale should DLCD consider as part of a local government’s definition of middle housing areas?

Not sure. I'd like to see what criterion people come up with though. My guess is that people will offer creative ideas that will exclude them and their neighbors. So, I appreciate that DLCD is attempting to generate justiable rationale.

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**Q4**

Recommendations – The analysis conducted by ECONorthwest and SERA Architects found that three development code provisions played major roles in the ultimate feasibility of triplexes and quadplexes: minimum lot size, allowable FAR, and off-street parking requirements. The model code and minimum compliance standards have been updated to reflect the findings of this analysis. What specific questions related to standards for triplexes and quadplexes still remain for you after reading this analysis?

Can a 5000 sq ft property possible fit a fourplex and 4 off street parking spots? 3?

We need to see some examples of this. In my experience, the only triplexes and fourplexes I've seen on smaller lots (under ~6,000 sq ft), never have more than 1-2 off street parking spots.

Thus, I am very concerned that allowing cities to require 3-4 off street parking spots on small lots will entirely kill middle housing opportunities on the very properties with the best market potential (central city, older, walkable neighborhoods, with smaller lots).

As the ECONorthwest analysis shows, this housing type is likely to still be **\*\*extremely\*\*** scarce, as it will likely rarely pencil out. Let's give it a fighting chance, as was the clear intent of the legislation.

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**Q5**

Townhome Feasibility Analysis – A similar analysis to the analysis ECONorthwest and SERA Architects conducted for Triplexes and Quadplexes will be conducted for Townhomes. What specific standards do you feel ECONorthwest should study in this analysis for townhomes?

Allowing narrow townhomes. Eliminating lot size minimums. Allowing lot line partitions for fee simple transactions where townhomes are developed under the model code.

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**Q6**

Definitions (memo pages 3-6) – “Goal Protected Lands” and “Infrastructure Constrained Lands” definition has changed to represent the “whittle away” approach to defining areas in which middle housing (except duplexes) is not allowed. Do you agree with the language in either the model code or minimum compliance?

Yes, that's fine.

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**Q7**

Development Standards (memo page 10-14) – 3. Minimum Lot Size – 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 applies to both the model code and minimum compliance. Do you agree with this approach? If no, please describe how a standard requiring a different minimum lot size would not cause unreasonable cost or delay to the development of a triplex or quadplex.

Yes, absolutely. Requiring larger lots is not viable, nor would it result in market rate, affordable middle housing.

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**Q8**

Development Standards (memo page 10-14) – 8. Regulating Scale/Bulk – Maximum Floor Area Ratio (FAR) was the preferred choice to regulate scale and bulk of buildings with an added option to scale the allowable FAR based on the minimum lot size in the zone, this would have the effect of allowing higher FAR in some zones. Do you have specific objections to this approach? If yes, what changes are appropriate to make to the FAR standard?

If we're going to stick with FAR for middle housing, which is probably not advisable in hindsight, then yes, it makes sense to allow up to 1.5 FAR in small lots. A tiered FAR could work, though it's solving a problem that does not necessarily exist. ie. Would a flat 1.5 FAR actually present a problem? I understand the fear of a large structure on a large lot, but I don't agree that this fear is warranted, as it is purely hypothetical and speculative. Just because there's a high FAR, it's likely that developers would find a sweet spot well under the max allowable FAR.

This is the case with single family homes too.

This naturally raises the question again, why bother using FAR? Let's keep it simple, and use common bulk and scale methodologies that cities & developers already use, and provide open space and rear and side yard setback standards in the model code for this housing type.

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**Q9**

Development Standards (memo page 10-14) – 9. Off-Street Parking – A fourth option has been provided for triplex and quadplex off-street parking to reflect the findings of the feasibility analysis. Which of these options do you prefer?

Option 4 is good. I prefer this and have offered testimony with Sightline Institute to support a version of this approach.

However, instead of 5000 sq ft, we're suggesting 6,000 sq ft. < 6,000 sq ft is a fairly common 'small' lot size, and one in which even one off-street parking space per development could prove problematic.

Furthermore, we're suggesting that when the primary house is preserved, no additional off-street parking may be required for any sized lot. The rationale is that additional off-street parking requirements beyond what is already provided on properties with existing structures, will force developers to pass on the project, tear down a house. One cannot simply add additional off street parking to an existing property. This is extremely evident to me, as someone who has consulted with hundreds of homeowners about adding an ADU to 5,000 sq ft properties. Given that additional off street parking in those situations, it's abundantly clear to me that additional off street parking would completely impossible when attempting to add a detached duplex in the back, or even converting a large house in multiple units.,

For medium and larger lots (over 6,000 sq ft), DLCD can allow for cities to require additional off street parking if it must, but DLCD should understand that this requirement will still essentially kill middle housing development for lots that are medium sized (6,000-8,000 sq ft), or make it very unattractive.

I've seen new-ish middle housing with 4 off-street parking spots on medium-sized lots. I would not want to live on those properties. They tend to look like mid-sized apartment complexes with no common amenities, no green space, and they give total deference to automobile storage over good architecture for the humans living there. On the positive side, their ugliness likely makes them marginally less expensive than well-designed middle housing, and effectively ensures that they'll stay rental units forever.

I hesitate to suggest a more complex tiered solution, but DLCD could consider a small, medium, and large lot standard. Newly developed larger lots (over 8,000 sq ft) can likely handle up to 4 off street parking spots without destroying the site plan aesthetically.

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**Q10**

Design Standards (memo page 14-18) – 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?

Not sure. Likely, option 2 is preferable.

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**Q11**

Development Standards (memo page 19-24) – 3. Minimum Lot Size – Two options for minimum lot size are presented. 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. Option 1, a flat rate has been removed. Which of these options would be most applicable for a model code?

I don't currently have sufficient understanding of this product type to make a recommendation.

**Q12**

Development Standards (memo page 19-24) – Density. Two options are provided to determine how or if density should be used to regulate siting and design of townhomes. Which approach do you prefer?

Not sure.

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**Q13**

Development Standards (memo page 19-24) – 10. Off-Street Parking – Three options are proposed for standards related to off-street parking. Of these, which is your preferred option?

Option 1.

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**Q14**

Development Standards (memo page 19-24) – Are there other items or options listed in Development Standards that you would like to provide feedback on?

No.

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**Q15**

Design Standards (memo page 24-27) – 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?

Not sure. Likely, option 2 is preferable.

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**Q16**

Cottage Clusters - 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?

Density should not be used to regulate housing clusters.

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**Q17**

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

No.

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**Q18**

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

No, the 900 sf footprint is ok.

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**Q19**

Cottage Clusters - What do you think an appropriate off-street parking ratio is for cottage cluster developments?

No minimum parking requirements.

Why is DLCD so focused on parking?

What part of HB 2001 compels DLCD to require any parking for middle housing options?

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**Q20**

Other questions or comments:

Thank you for your continued hard and rapid-paced work on this complicated set of development regulations.

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**Rulemaking Advisory Committee #8**  
**Zoom-only Meeting**  
**July 14, 2020**

**Key Insight Summary**

*Housing Production Strategy Structure* – RAC members offered specific recommendations to the Housing Production Strategy report structure to better analyze and incorporate issues of equity, including homelessness, access to opportunity, and gentrification/displacement. RAC members noted that developing clear definitions and instructions for analysis will be important in achieving meaningful equity outcomes. Additionally, RAC members brainstormed best practices for jurisdictions to consider in tracking and evaluating the effectiveness of strategies over time.

*Housing Production Strategy Review and Enforcement* – There is general agreement among RAC members that one of the key purposes of the Housing Production Strategy is to ensure that local jurisdictions are taking a more active, positive role in the production of needed housing and meeting their Goal 10 obligations, while acknowledging that cities are only one player in the larger environment of housing production. Review and enforcement should be structured to reflect this, with review and enforcement procedures working to ensure good faith efforts of jurisdictions to increase the production and affordability of housing. RAC members suggested DLCDC should take a two-track approach to HPS compliance, each with varying tiers of enforcement. One track would focus on the actual completion of an HNA and subsequent HPS according to the 6-8 year schedule required by law, while the other track would focus on enforcement related to adopting and implementing strategies identified in an HPS. Each tier of enforcement would provide an opportunity to remedy issues, with each subsequent tier containing escalating consequences.

*“In Areas”: Flexibility and Equity* – In light of a letter sent from LOC on behalf of local jurisdiction urging the Department to provide additional flexibility to local jurisdiction in determining where middle housing types are permitted, RAC members discussed proposed options for the Department to consider. Members from local jurisdictions feel that the proposed “whittle away” approach in combination with minimum compliance standards bind the ability for local jurisdictions to regulate higher middle housing types, and propose an alternative in which local jurisdictions retain the flexibility in determining where middle housing may be located while ensuring that decisions meet Department expectations and do not reinforce patterns of segregation. Housing advocates note that this flexibility of local jurisdictions has been historically used to reinforce patterns of segregation, and the proposed standards do not provide sufficient specificity to sufficiently prevent inequitable zoning decisions and patterns of segregation by race and income. DLCDC staff will need to determine what approach could meaningfully address concerns of both flexibility and ensuring the provision of fair and equitable housing choices.

*Cottage Cluster Model Code Standards* – RAC members provided commentary on the draft Cottage Cluster code for Large and Metro Cities. Members provided general comments and direction to increase the flexibility and likelihood that cottage clusters will be built. Measures to increase flexibility include the ability to provide units on individual lots as well as limiting any additional standards (e.g. design, dimensional, and parking standards) that inhibit the feasibility of a cluster project. Finding the right balance of incentives will be critical for ensuring the successful implementation of cottage cluster code.

## Attendees:

### RAC Members:

- Allan Lazo
- Brian Martin
- Chris Pryor
- Colin Cooper
- Debbie Aiona
- Derrick Tokos
- Drew Farmer
- Ed Sullivan
- Ellen Miller
- Hope Beraka
- Jacen Greene
- Jeannine Rustad
- Jesse Sharpe
- Joel Madsen
- Kelsey Zlevor
- Kimberli Fitzgerald
- Lynne McConnell
- Mark Rust
- Martha Fritzie
- Mary Kyle McCurdy
- Michelle Glass
- Nancy Donovan
- Nancy McDaniel
- Sarah Adams-Schoen
- Shannon Vilhauer
- Stephanie Jennings
- Ted Reid
- Tim Morris

### Public:

- Alexis Biddle
- Anthony Farmer
- Ariel Nelson, LOC
- Kim Armstrong
- Kyle Macadam
- Laura Kelly
- Lauren Sommers
- Mary Piper
- Robin Smith
- Olivia Cleaveland
- Pauline
- Sophie McGinley
- Terri Harding

### Staff/LCDC:

- Casaria Taylor
- Sylvia Ciborowski
- Robert Mansolillo
- Ethan Stuckmayer
- Sean Edging
- Kevin Young
- Gordon Howard
- Commissioner Anyeley Hallova
- Emma Land
- Anne Debbaut
- Palmer Mason

## Meeting Notes

Meeting overview – HPS Structure and Enforcement and HB 2001 Large Cities “In areas” and Cottage Cluster standards

Update on Rulemaking process overview and timeline.

- Hallova HPS Strategies timeline
  - Cutoff of Aug 19<sup>th</sup> to provide RAC members time to submit last minute strategies

## Housing Production Strategy – Review and Enforcement

- Purpose to discuss Review and Enforcement of HPS
- Overview of previous HPSTAC meeting from Mary Kyle
  - Agreement to better incorporate data by race to advance racial equity



- Discussion of data for those facing homelessness
- Local jurisdictions play a significant role in producing housing in terms of removing barrier and providing incentives
- Fair housing planning and HPS alignment with Consolidated Plans and Analysis of Impediments
- “Access to Opportunity” – Best approach to ensure local jurisdictions are providing access to opportunity, especially for communities who have been historically locked out.
- Reporting requirements – alignment with HB 4006 and need to collect data on tenure and affordability.
- HPS Structure – Up front need to link HNA and RHNA regarding housing types/affordability with gaps locally, and being intentional about who the market is not reaching.

### *Homelessness*

- Jesse: Data on homelessness [Review recording]
  - Drew: It is difficult to know where individuals are residing within a region. I agree with the changes.
  - Allan: Is there a system around COC or community activist organizations for sharing data on homelessness?
  - Jacen: The McKinney-Vento data will be great for rural communities if you apply the right factor based on assumed family size (not complicated).
  - Staff: The intent of the “blended” approach is to allow jurisdictions to use the best available data, with an understanding that it is often a barrier.
- Michelle: When thinking about equity and TAC recommendations on connecting HNAs – I am curious about how historic mix is often used to project future housing need. E.g. Southern Oregon uses existing low density patterns to project future housing, which may conflict with goal of providing more affordable options to people who have been traditionally locked out.
  - Staff: In lieu of revising HNA, we can ask cities specifically how their projected housing need actually serves contextualized need in the HPS.
- Ed: How are you addressing needs of those with disabilities? Did not see in the RHNA.
  - Staff: This would be part of the additional work that a City needs to do in terms of understanding full breadth of housing need. We have not incorporated this specific analysis as a requirement, but it is part of the fair housing analysis that they do in the later portion of the HPS on Fair and Equitable Housing.
- Debbie: We want jurisdictions to have sufficient capacity and resources left to focus on actually work on production. So, giving them flexibility on how they fulfill this requirement should help by not overburdening them with onerous reporting and analysis.
- Mary Kyle: Should we require that if the CCO and/or McKinney-Vento data is available for a jurisdiction, that they use it? And any other data they want?
  - Hallova: It seems that there should be a base requirement and allow the ability to go above and beyond.
  - Jesse: This is a good idea. Every school district in the state is required to collect McKinney-Vento data.

## *Engagement*

Update on making this section more specific and an outline of the structure.

- Debbie: Remind you to consult taxpayers in addition to consumers and producers
- Staff: SB 1051, which passed in 2017, revised the definition of "needed housing" in ORS 197.303 to specifically include the housing needs of low, very low, and extremely low income households. This requires a more detailed discussion and analysis of low income housing needs in HNAs since the bill passed.

## *Strategies and Tools*

Update on the role of a Housing Production Strategy in meeting needs over a 20-year planning period.

- Hallova: Tenure and income – wondering about standardizing these things. Income should be broken down in a specific way.
  - Staff: Tools, policies, and strategies will work to analyze affordability and tenure.
  - Hallova: Publicly-Subsidized (< 30% AMI), Affordable (30-80% AMI), Workforce (80-120% AMI), Market Rate (> 120% AMI)
  - Tim: Seems to be comprehensive
  - Hallova: When people collect building permits, jurisdictions would be able to receive data they don't normally have. I don't know if we can require that, but it would be nice to have that information.
    - Staff: Good to provide in best practices
    - Ellen: Providing that information at building permit would be welcome from builders. Support the idea of incorporating into best practice

## *Achieving Fair and Equitable Housing Outcomes*

Update on the updates to the five major questions.

- Hallova: If we use a defined term with a definition or geography that specifies what we mean to make implementation clear.
  - Stephanie: Part of the discussion was the federal definition doesn't fit the Oregon context, it was designed at a national level to apply to a lot of different areas. This discussion is how to think about opportunity as not one or two census tracts but opportunity throughout an entire city. The intent behind this is to open access to opportunity that people have been locked out of, which is not the same as the federal definition of opportunity areas. This will look different for different communities and populations (e.g. family with children have different priorities than older people)
- Allan: On opportunity, I am not sure if the definition was a federal designation but an OHCS index.
  - Staff: They are federally designated.
  - Allan: We should look into one definition for what "opportunity" means. Leaving this to a community does not always result in the best outcome. Additionally, we have not addressed areas of vulnerability (e.g. displacement) and looking into strategies that mitigate vulnerability (e.g. preserving naturally occurring affordable housing).

- Staff: DLCD is working with Dr. Bates and Zapata on developing a guidebook on anti-displacement and how to incorporate this into the HPS.
- Mary Kyle: As someone who is not fluent in these various definitions/uses of “opportunity,” it is hard to determine how to think about this and its applicability. Will this be clarified, eventually?
- Staff: Makes sense to move from defined terms to have jurisdictions think about what this means
- Mary Kyle: We think through areas as mutually exclusive, many of these are entirely overlapping in some ways. It seems like there are a lot of basic common denominators.
- Derrick: What is DLCD looking for in terms of local jurisdictions to produce? Is this shelter beds? A broader scope of safety net services? How does this fit within the construct of HB 2003 and what we can realistically do. On HB 4006 reporting – On gross units produced, not net. Does not capture units that are demolished/lost as part of the report. Consider including that consideration in the HPS.
  - Staff: Intent of the HPS is to recognize that Cities are one important player in the future production of housing and ensure they are putting a good faith effort towards encouraging production.
- Hallova: We all have similar goals in this section and are struggling with “what do you ask? And what do you get in return?” and how this will move the needle. A lot of these questions haven’t been asked, which result in not getting answers. We need to get answers first to determine how our approach works or doesn’t work.
  - Allan: It's also the point I've made that the current Goal 10 ecosystem hasn't been asking these types of questions.

### *Reporting*

Update on two-pronged reporting approach with annual number data and a mid-term report with reflection of what has taken place. Provide feedback through survey.

### *Review and Enforcement*

What is DLCD/LCDC’s role in reviewing Housing Production Strategies to ensure jurisdictions are making a good-faith effort in meeting identified housing need.

- Michelle: This is looking really great – the percentage of households that are severely rent burdened and linking that to houselessness. There was a 2018 Zillow report solidifying the link between rent burden and growth in houselessness. I see this as supporting houselessness data in this process, because cities can affect rent burden in significant ways.
- Shannon: What happens if there is a community within a city where there is active dissent to these principles like middle housing development. This is the concern in the back of my mind.
- Allan: It should not be a surprise that I'm supportive of the additional attributes item #2 about increased access to housing opportunity. Also, are the criteria listed here for review of the annual report, mid-term report or for the HPS report overall -- or all of them?
  - Staff: This portion would be for the overall report and the mid-point review would help us understand if a city is making advancements. The annual report would help identify progress.

- Tim: Curious as to why “severely rent burden” is called out over just “rent burdened”
  - Staff: This list is pulled from the list identified by the Legislature.
  - Tim: I raise it because we are seeing a lot of additional regular rent burden falling through the cracks of federal support.
- Joel: Curious to hear more from DLCDC on capacity to carry out and the goals/ideals identified in this RAC.
  - Staff: This is the goal of the enforcement conversation that we want to have. If something rises to the level of not meeting this, what is the process for remediation?
- Mark: Sandy Belson is on the HPSTAC, so I haven’t been tracking this. On the City perspective, how this is assessed is important – is there a consideration for a small city not having a lot of an impact. Will there be opportunity for a more regional consideration over isolated approaches.
  - Staff: It makes sense to not look at Springfield independently from Eugene. We have to take this context into consideration. It’s so unique that it’s difficult to write rules around this.
- Debbie: We support the two additional attributes that LCDC will address in its review of HPS sufficiency:
  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.
- Ed: Let me again raise my longstanding concern over the lack of standards for HNAs, which is the most significant element of the HPS. There simply aren’t those necessary criteria for evaluation. DLCDC has not sought review of HNAs in LUBA under the PAPA process. Is there any thought about getting HNAs to meet a common standard so that we can compare apples to apples in weighing the adequacy of a city HPS?
  - Allan: Agree with Ed. See my comment above about the Goal 10 ecosystem.
  - Mark: Agree with Ed also. HNA have not been upholding Goal 10 for a long time.
  - Staff: HNAs will need to address needs to low income, very low income, and extremely low income households. At the agency, we view that as heightened need for analysis and data in HNAs that come our way. Though this does not go fully to fix the issues with HNAs. With that said, it’s not clear that HB 2003 opens the ability to reconsider rules around HNAs. Certainly, we are interested in engaging in rulemaking to change divisions 7 and 8, but we are not likely to do that this biennium, but hopefully in the next biennium.
  - Hallova: If there was anything about the needs analysis that is most needed to be changed to address the comments that were made, is there something specific?
  - Staff: There are a few things we have discussed, including homelessness, housing underproduction, specialized housing need (ORS 197.303 provides a short list), etc. I think changes made by SB 1051 give heightened focus to low income. HNAs have gotten better, but the level of specificity will evolve. Local governments will be writing HNAs with HPS requirements in mind.
  - Jesse: there is also no standard or enforcement on engaging impacted folks. Despite 1051, a lot of cities continue to fall very short on this.

### *Enforcement*

How do we respond if the “good faith effort” does not follow through. HB 2003 lists potential tools for enforcement. What is the hard stop at where enforcement ends? Where should enforcement begin? Are there tiers to this enforcement?

- Mary Kyle: How do you know if a city is “failing” and what do you do about it? There’s a statement of objectives – assuming a City’s HPS meets enough of the criteria but some strategies don’t work out, can the Department build in timelines for fulfilling need and if not, fixing issues when they arise with requirements to address failure with guidance from the Department within a timeframe to remedy the issue? E.g. reliance on a funding measure to support housing development that fails.
  - Staff: This reopens the review process. Interested to see the City perspective
  - Mary Kyle: The idea is that remedial actions should be taken into account in the process.
- Shannon: Thinking ahead, how do we reward optimistic and realistic endeavors to do this work. If there’s a community that is resistant – they maybe wouldn’t have access to certain types of programs.
- Kimberli: While my area of expertise is not HPS - I do have a lot of experience with compliance. I support the tiered enforcement approach. Generally I've found 3 steps that work: 1. Notice /opportunity for voluntary compliance- additional tech assistance offered from DLCD; 2. Enhanced Review with Formal correction required (with a clear action and timeline defined); 3. Enforcement (financial or other consequence).
  - Staff: Hearing the need to distinguish between need for resources vs jurisdictions being reluctant to perform the work and each warrants separate responses.
- Joel: Along with Shannon on tiered approaches, there are times where a community has an inability to adopt an HPS versus implementing policy recommendations from a HPS. Maybe this is how we define different tiers of enforcement.
  - Allan: I would agree with Joel and also agree with the tiered approach. It also seems like DLCD is being asked or asking to assess the intent of a jurisdiction's intent, which is not an enviable position to be in, but agree that there is a need to evaluate intent to comply vs. resist the underlying concepts of the legislation. Agree with Ethan that there does need to be a difference in response from DLCD based on evaluating intent.
  - Ed: Supportive of tiered approach.
- Mary Kyle: Because strategies can be more lofty, we should build the assistance/reward/assistance into the process. On the tiers, except that step 1 of a notice/opportunity is that they must comply mandatorily.
  - Staff: Advanced review would likely be at a latter time. The first may need to be more collaborative.
  - Mary Kyle: This is about Goal 10 (and historic failure to meet it) and we are being collaborative. Building timelines with deadlines should be built in. Failure to meet a deadline should require notice.

### **Large and Metro Cities Model Code and Administrative Rules**

- Ellen Miller update from last MCTAC meeting: Greater and stronger focus on getting implementation right. The implementation is really important and we shouldn’t continue trends that have gotten us here today.

- “In areas” discussion – DLCD brought RAC approach to the TAC, it was quickly raised by cities that there were more options than what was in the memos. Resulted into the letter from LOC, which is the basis of conversation today. Proposal in TAC meeting (pg 75) is applicability written to provide local government the ability to determine the areas. There was a difficulty in getting a comprehensive way of defining parameters, so DLCD offered a process allowing the jurisdiction to include findings for areas “whittled away”. On protective measures: Provides degree of deference to cities. No longer considering numerical standards given arbitrary and exclusionary considerations.
- Feasibility research from ECONW (pg 57) – FAR will be considered as a development standard scaled to lot size. Parking – poses impacts on smaller lots.
- Townhouse development and design standards – No maximum limit on number of units and scaling lot size based on SFD lot size, and using lot size to regulate in lieu of minimum density. Discussed lot width and street frontage. Increase in total maximum height, up to three feet. FAR has been removed.

### *“In areas”*

Update on previous MCTAC and subsequent conversations on changing the approach to “in areas” in light of issues raised by cities and LOC to provide jurisdictions greater deference in deciding where to allow middle housing.

- Brian Martin on issues with “whittle away” approach and alternative ideas
  - Outline of perceived issue with the “whittle away” approach taking flexibility from jurisdictions
  - Alternative of providing distributed outcome of lots where housing could be allowed.
    - Define Expectations: Allow middle housing in areas on significant number of lots
    - Development rules: provide opportunities to reduce segregation through distributing middle housing
    - Doesn’t exclude wealthy neighborhoods
- Allan: Brian, could you say more about how adopting the "whittle away" strategy as part of the model code or minimum compliance would prevent cities from implanting other strategies? Wouldn't they be able to implement those strategies as long as those strategies met the minimum compliance? Are you saying some of the strategies currently being used and implemented don't meet the proposed minimum compliance?
  - Brian: Minimum compliance provisions take away the specific tools cities use. Minimum lot size. Maximum density. Etc.
  - Allan: Thanks, yes, sounds like Robert is also addressing some of those examples.
- Colin: I want to characterize this third approach as not further whittling away. E.g. Hillsboro has provided and embraced middle housing, and what we would like is the ability to do master planning to provide variety of housing. We believe in meeting the entire market segment of housing that people need.
- Mark: I didn’t catch the third approach. Agreement with opportunity for flexibility. I want to highlight Section 2 (5) – Regulations that do not individually or cumulatively discourage development of all middle housing types. I am not thinking about wholly excluding an area, but there may be areas where certain types are not permitted but others are.

- Hallova: I understand the issue described and problem that comes with something not being specified everywhere – this allows for wealthy and powerful to have greater control over the outcome. What is the risk that contributes to tools to “whittle away” and the bad outcomes?
  - Ted: I concur with Commissioner Hallova's question. Is there actually a big risk that triplexes and fourplexes would be built on small lots?
  - Allan: I also concur with Comm. Hallova's question. Agree with Comm. Hallova's statement there about considering the extreme example from those cities that may not be well-intentioned.
  - Colin: We do not want to pit neighborhood against neighborhood. We are looking to enable greenfield development, it makes it more difficult to plan for maximum infrastructure. Additionally, historical lot standards may warrant additional restrictions. We want flexibility to create these wonderful neighborhoods.
  - Hallova: It's important to keep in mind the jurisdictions that would seek to undermine, and thinking through the extremes are important.
  - Brian: It is hard to come up with examples, because we haven't done our project yet, but one of the dangers is with the “one size fits all” approach for the state. The other danger is how cities react to minimum compliance – there is one city considering reducing their minimum lot size for SFDs and now there is less incentive to do that.
  - Mark: One example, in Springfield we are looking to reduce minimum SFD lot size. Part of the answer needs to be “exceeding the authority of the legislation”. If we call cities “bad actors”, it provides ability to spear into this solution.
- Jesse: I think it is really important to be clear that there are cities with stakeholder process that are rooted in traditional groups of developers. I am concerned that when we add too much flexibility, we have an increase in segregation in the community. Being aware on this call that we have a lot of people with good intentions, and that may not reflect when we implement these in Southern Oregon. I am always concerned about that excess flexibility.
- Mary Kyle: I have the same question as Hallova. I think there is more than one way to read the legislation. I remember of the lofty things we said in the beginning of this RAC about how we were going to do things differently. I think that is consistent with the intent of HB 2001 to break down segregated patterns. I am not persuaded by notions of ways we've done minimum lot sizes, density, or PUDs. In every city, we have increasing segregation and income/race polarization. This isn't about “good actors” or “bad actors” – we know we have segregated housing practices on the ground. I think we need to be bolder. “One size fits all” doesn't resonate with me because if it doesn't work in a City, it doesn't get built. Deciding to avoid increasing flexibility is not in compliance with Goal 10. Why would we not allow all of these liberally through greenfield development, because this is the opportunity to size things right. Having a % doesn't get at all to location, which is the point of HB 2001. These middle housing types are not dense enough for high frequency transit. I appreciate that the cities in their letter wanting to promote racial equity and decrease exclusivity, but I haven't heard anything specific about that and to know when it's being achieved.
  - I agree with Mary Kyle and Comm Hallova on this point
  - Kim Armstrong (public): I am a little concerned that this group is putting a lot of energy into seeking to avoid some edge case terrible middle housing developments that are extremely unlikely to actually occur in reality and to MKs point, no community has

existing housing that equitably meets the needs of its entire community. Clearly the ways we have done this historically doesn't work.

- Kim Fitzgerald: Are there any thoughts yet from DLCD staff about clear metrics for this third alternative that could be established under minimum compliance?
- Allan: As Hallova talked about earlier, we can recognize that we are of similar mind and intent. I wonder if we need to admit to some degree that what we are talking about is jurisdictions without that good intent. We know that the flexibility and intent built in has created income and racial segregation. I wonder if we need to recognize the flexibility we are talking about could be used either way.
  - Brian: Flexibility has to be accompanied by expectations and accountability.
  - Kim (public): I think Alan's point is excellent— flexibility has historically been disproportionately used to reinforce racial inequities in housing, there doesn't seem to be any reason to allow some areas with additional incentives for middle housing, starting from "assumed to be allowed everywhere"/whittle away
  - Staff: The definition of "in areas" can't be a neighborhood judgement call or a decision about how a neighborhood should look based on how they looked in the past. If there are ways for a city to say that a housing type isn't going to work, they can show that they need those tools back on the table.
- Hallova: If we can hone in on the issues, maybe we can find solutions that provide additional flexibility.
  - Allan: The opposite is not being expressed here. The "whittle away" approach was developed to prevent that. Perhaps there is a way to incorporate flexibility into that approach.
  - Staff: The intent of the third option is to provide that mean to provide findings to put additional tools back on the table. So long as there is no exclusionary portion and does not cause unreasonable cost or delay. The safe harbor outlines the approach that is acceptable, but allowing a local jurisdiction to go beyond that with the burden of proof on them to demonstrate it doesn't result into unreasonable cost or delay.
  - Sarah: I agree with Allan's point too. In the zoning context, flexibility has almost ubiquitously been used to cause and sustain racial and economic segregation in communities everywhere—liberal, conservative, etc. Some flexibility makes sense, but flexibility with clear standards are needed to make the kind of bold change that HB 2001 requires.
  - Allan: Yes, agree with Sarah above. So we'd need to look pretty closely as to whether we might be able to implement minimum compliance standards with clear standards that respect the intent for substantive change that HB 2001 intended.
- Timothy: This particular amendment go against the goal and intent of HB 2001. I don't understand the context in which it is being proposed. I struggle to picture the worst case scenario. Allan made a good point is that additional flexibility creates additional loopholes for exclusive communities. As a neighborhood advocate, this does encourage exploitation. We have to be careful in creating "flexibility" because it creates more opportunity for bad actors to utilize exceptions to block housing. We should try to create a long lasting bill, adding additional exemptions and convoluting what we see will not make it long lasting. My solution: I am not sure that this is the solution that we should go down. I think there is a lot of reason why we are



here. It's possible the word "area" was omitted and not addressed. Here, we have the opportunity to set the precedent for the word "area". Zoning laws have been used to address segregation, but I don't see this proposal addressing that.

- Ed: I see this as the defining moment for the RAC. There is a danger that "flexibility" will be used to undermine House Bill 2001, and the "presumptive" approach is correct. I think the "leaving out" is exceptional and should be justified. The work of this committee is to provide housing opportunity, not flexibility for jurisdictions. It is a state sanctioned device to exclude and discriminate. If we come up with a solution that is puffy and vague, then HB 2001 means nothing and the work of this group is a sham. It seems to me that the people who came up with this alternative need to come up with concrete standards. If you want to get out from under that obligation, show us your standards.
  - Brian: HB2001 includes flexibility, and cities have suggested expectations DLCD should set to prevent jurisdictions from evading the law's intent.
- Martha: At Clackamas county, when we say "City" we mean large, unincorporated areas. It's flexibility with expectations and accountability. We are trying to find a balance of all jurisdictions affected. It is really to write code for bad actors, but you can't penalize actors who are doing good work. I want to thank DLCD for entertaining this conversation. It is going in the right direction, but there is an understanding that we do not want a "one size fits all" or something that creates the potential for abuse. Finding the balance will be important.
  - Allan: Yes, thank you, Martha and others. Agreed that there is a balance we need to figure out how to strike here.
- Colin: It's absolutely about performance. We are just working on this now and we will fly forward to find something that works. Zoning as a tool is a blunt force and blanket, and you can point it to bad outcomes. We are looking to flexibility to create better opportunities, not less housing.
  - Sarah: The third approach has been described today as an approach that will allow cities to produce more middle housing and affordable housing in areas that traditionally excluded it. I have to admit I'm still not understanding how a presumptive approach is problematic given that goal stated today (by Brian and others, I think).
  - Mary Kyle: What are the concrete metrics by which residents and the public can understand, and DLCD can measure, whether "expectations" are met and the intent of HB 2001 is fulfilled? These words are still way too vague - "flexibility," "better communities," etc... are not it.
  - Brian: I'd suggest people start with the LOC letter and the letter on page 126 of the RAC packet. The concepts need additional details and specifics, but cities are willing to help make things more specific. Also, it is not hard to measure whether, as applied, a city's development code allows middle housing in a city and where.
  - Ed: No Brian, those are no standards. A vague opposition to segregation is not enough. Where is your standard in "Every jurisdiction would be expected to allow middle housing in a way that promotes racial equity and reduces historic segregation by race, ethnicity and income by providing the opportunity for a wider range of housing types to be built in areas zoned for residential use that allow detached single family dwellings." Where is your standard when you say that the state should establish standards. What are YOUR standards. You don't have them and should not expect us to consider what is

not before us. When you do have something, we can consider it, but don't leave us to the tender mercies of "flexibility" without a standard that is real, rather than aspirational.

- Jesse: Brian, we sit in meetings with a mayor who believes the city does not need to comply with goal 10. When confronted about segregation, he told us "if people can't afford to live here, there's cheap housing in the mid-west." We know that he will not comply if he is given the flexibility to do so. We can measure the lack of compliance but short of a lawsuit, the metric has no enforcement.
- Jesse: I think we need to be clear that meaningful accountability is extremely weak outside of the NWern corner of the state. If we increase flexibility with accountability, we need to make sure that accountability can be upheld in more rural and more removed metro communities.
  - Allan: Yes, thank you, Jesse. I think we often forget how different things potentially really are outside of the metro/urban areas.

### *Cottage Cluster Standards*

Update on Cottage Cluster standards proposed in the LCMCMC. Context surrounding the intent behind developing code language around cottage clusters – develop a reasonable, off-the-shelf description of cottage cluster development and allow jurisdictions to define cottage clusters.

- Mark: My concern is ownership opportunity. I would push to come up with some kind of safe harbor language that could be integrated that could lead the way for somebody to easily integrate.
  - Staff: i.e. provide a modular option for fee-simple ownership
  - Mark: At the back of the packet is a letter from Spevak advocating for this and notes that it's a major obstacle to not allow fee-simple options because it is preferred and summarizes the consequence is that the product becomes a rental product. One of the biggest parts of our housing strategy is to increase ownership opportunities.
  - Mary Kyle: I like Mark's modular suggestion for cottage clusters.
- Hallova: The only type of cluster I attempted to do this, I needed to attach these (two-story) structures to the townhomes. Because of minimum setbacks, I was not able to pull it off.
- Hope: To expand on Commissioner Hallova's example, creating the cottage cluster inside of a townhouse project, the goal was to create four permanently affordable housing units. There were zoning complications that made it difficult to execute in a market rate project. I would prefer to not see additional limitations at all – there are plenty that already exist. With regard to parking, garages, etc. I would prefer not to see any additional limitations. I would try to make sure local jurisdictions couldn't further encumber projects like the Commissioner mentioned.
- Mary Kyle: I agree with Hope, on the 900 SF – it is defined as the footprint which could allow for two stories. They should be allowed to be attached or detached. We should err on making these more likely to be built.
  - Staff: That's typically what the market bears – two stories makes sense. We wouldn't want to create a situation where these clusters become so large that they don't serve the intended income groups.
- Hallova: Trying to be affordable at \$300,000 - \$350,000

Next steps and LCDC upcoming meetings.

# MIDDLE HOUSING MODEL CODE TECHNICAL ADVISORY COMMITTEE MEETING PACKET #8



**TO:** Middle Housing Model Code Technical Advisory Committee Members  
**FROM:** Ethan Stuckmayer, Senior Housing Planner  
**SUBJECT:** MCTAC Meeting #8 Discussion Worksheet

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Middle Housing Model Code Technical Advisory Committee Members,

In order to meet our ambitious timeline and schedule, meetings of the MCTAC 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 on August 4<sup>th</sup>, please use this worksheet to take down notes or to formulate your questions for the project team. Due to limited discussion time at our meetings, please submit this as additional written feedback to the project team at the meeting as you see fit.*

Thank you,



**Ethan Stuckmayer**

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**MCTAC Meeting Packet Item #8: Large and Metro Cities Preliminary Model Code**

**Chapter 3. Triplex and Quadplex Model Code**

[#1] Are there any regulations pertaining to Triplex and Quadplex regulations in the model code that you feel need to be revised?

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**Chapter 4. Townhomes Model Code**

[#2] Development Standards (memo page 18-21) – 3. Minimum Lot Size – This requirement has been removed, and development intensity will be limited by maximum density instead. Do you concur with this approach?

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[#3] Development Standards (memo page 19-24) – 6. Density - The new recommended approach scales the allowable density based on minimum lot size in the zone. The majority of single family zones (with a minimum lot size of 5,000 sf or more) would be allowed four times the density for a townhouse project. What are your thoughts to this new approach?

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[#4] Development Standards (memo page 19-24) – 8. Height – Building height has been increased from 25' to 35'. This increase is consistent with most cities height requirement for single family detached dwellings. It will also increase economic feasibility if a garage is required? What are your thoughts on this increase?

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**Chapter 5. Cottage Clusters Model Code**

[#5] Development Standards (memo page 27-30) – 2. Number of Units - Is it important to regulate the minimum or maximum number of units in a cottage cluster project?

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[#6] Development Standards (memo page 27-30) – 3. Lot Size - Should minimum lot size for cottage clusters project be regulated in some way? Or should cottage cluster project lot sizes be the same as single family detached lot sizes, in the same zone?

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[#7] Development Standards (memo page 27-30) – 5. Density - 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?

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[#8] Development Standards (memo page 27-30) – 7. Unit Size - Do you think unit size should be limited beyond the 900 sf footprint? If so, which approach do you prefer?

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[#9] Development Standards (memo page 27-30) – 9. Off-Street Parking - What do you think an appropriate off-street parking ratio is for cottage cluster developments?

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[#10] Design Standards (memo page 30-33) – Several design standards, such as cottage orientation, courtyard design, community building, and pedestrian access have been presented in the model code. What are your thoughts on the proposed language? How would you refine these regulations to better promote cottage cluster production?

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**MCTAC Meeting Packet Item #9: Draft OAR 660-46**

[#11] 660-046-0205 Applicability of Middle Housing in Large Cities (memo page 7-8) – Subsection 2 is where a Large City may limit or preclude the development of middle housing (other than duplex). Do the items listed provide cities with enough flexibility and what specific suggestions do you have to make this approach more implementable?

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[#12] 660-046-0205 Applicability of Middle Housing in Large Cities (memo page 7-8) – Do you agree with the approach taken to consider Master Planned Communities as areas where a Large City can apply different middle housing provision?

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[#13] 660-046-0220 Middle Housing Siting Standards in Large Cities (memo pages 9-11) – Subsection 2(a) - Triplex and quadplex proposed minimum lot size has changed. The numbers are draft, however, do you agree with this approach?

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[#14] 660-046-0220 Middle Housing Siting Standards in Large Cities (memo pages 9-11) – Subsection 2(e) - Triplex and quadplex parking regulations. Scaled approach based on lot size, how do you feel about this approach to off-street parking?

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[#15] 660-046-0220 Middle Housing Siting Standards in Large Cities (memo pages 9-11) – Subsection 3(a) – Townhouse project minimum lot size. A local government is not required to regulate minimum lot size for a townhouse project, but if they choose to, the average minimum lot size may not be greater than 1,500 square feet. Do you have any concerns with regulating lot size in this way?

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[#16] 660-046-0220 Middle Housing Siting Standards in Large Cities (memo pages 9-11) – Subsection 3(f) – Townhouse parking regulation. A Large City may not require more than one off-street parking space per townhouse unit. Is this an appropriate amount of parking to provide?

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[#17] 660-046-0220 Middle Housing Siting Standards in Large Cities (memo pages 9-11) – Subsection 4 – Cottage Clusters. These are preliminary and are mostly taken from the model code. Please provide specific recommendations for regulations pertaining to cottage clusters.

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DATE: July 24, 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: Triplex/Fourplex Financial Feasibility Sensitivity Testing for Middle Housing Model Code:  
Floor Area Ratio Update

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## Introduction

This memorandum provides an update to ECONorthwest’s previous analysis of triplex and fourplex feasibility. (Please see the prior memo, dated June 15, 2020, for our assumptions and methodology.) This memorandum is focused on testing the impact of increased Floor Area Ratio (FAR) standards as described in the memorandum from JET Planning and others. We have tested additional prototypes that reflect the higher maximum FAR standards listed in that memorandum in comparison to those currently listed in the draft model code (see Exhibit 1, below). In some cases, where a lot size falls at the transition point between two proposed standards, we have tested both standards.

Exhibit 1: Floor Area Ratios Tested by Lot Size

Lot Size (square feet)	Floor Area Ratios tested <sup>1</sup>
3,000 sf	0.9, 1.1, 1.4
5,000 sf	0.7, 0.9, 1.1
7,500 sf	0.6, 0.9
10,000 sf	0.4, 0.5

## Feasibility Results

### Physical Limitations

Note that SERA Architects has not done specific analysis of potential site layouts to determine whether the floor areas tested can realistically be accommodated given the other site limitations (parking, setbacks, etc.). However, SERA’s prior analysis showed that on a 3,000 sf (30-foot by 100-foot) lot, the assumed setbacks (20-foot front setback, 15-foot rear setback, and five-foot side setbacks<sup>2</sup>) allow for only a 1,300 sf building footprint even without on-site parking. Even with three full stories, this would limit the floor area ratio to 1.3. Achieving a FAR of 1.4 on a 3,000 sf lot or smaller would require smaller setbacks than 15- and 20-feet. It also would require that parking (if any) be accommodated in setbacks and/or within the floor area of the unit (i.e. a garage with a driveway only as long as the setback). SERA’s prior analysis of 5,000 sf and larger lots showed that setbacks and parking are less likely to constrain the total FAR, especially if buildings can be three stories tall.

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<sup>1</sup> Floor area ratio, per the current draft model code definition, includes garages and enclosed parking areas.

<sup>2</sup> The current draft of the model code establishes these as a maximum that jurisdictions can impose.

# Financial Implications

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):

- 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).

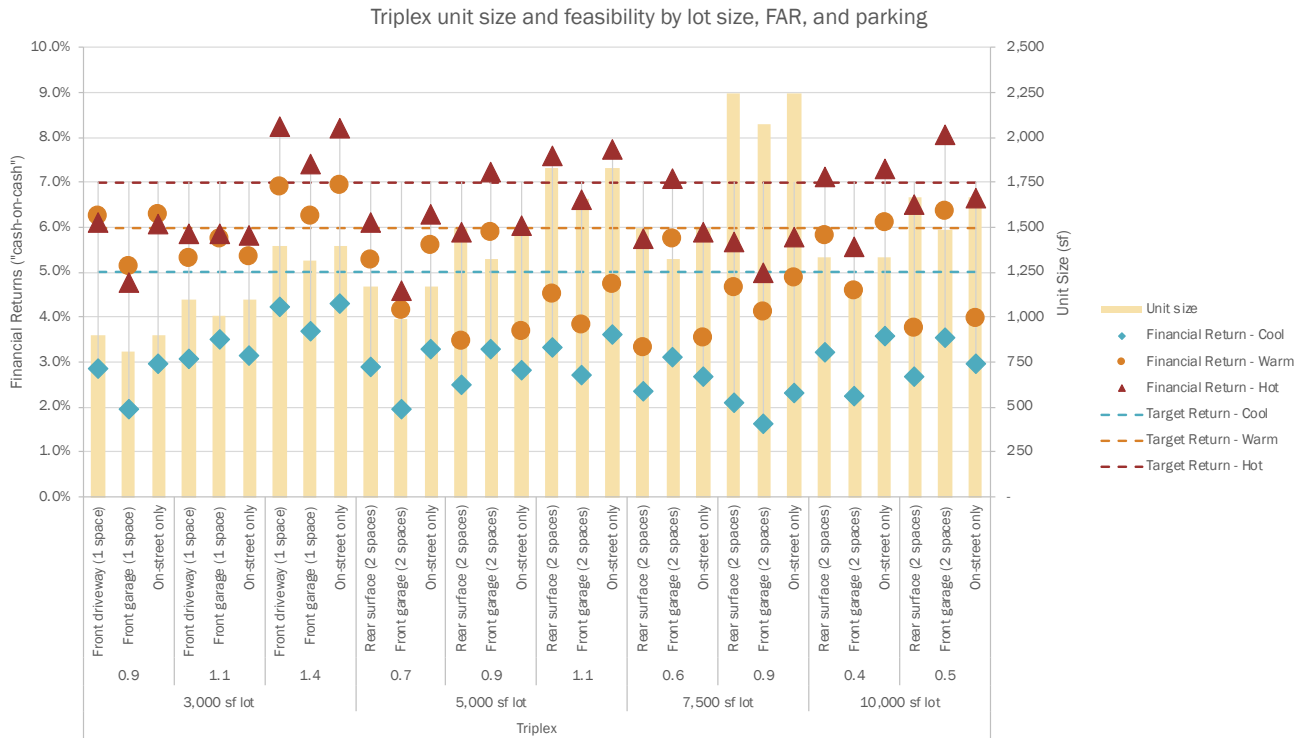
Where the estimated returns exceed the target returns for that market (shown as the marker above the dashed line of same color), this indicates a greater likelihood of financial feasibility for that development. **This analysis is intended to provide a rough indication of feasibility challenges, not to provide a precise calculation of the feasibility of a specific situation.**

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



Source: ECONorthwest

### Exhibit 3: Triplex Results Summary by Lot Size, FAR, and Parking



Source: ECONorthwest

## Conclusions

Achieving higher floor area ratios on smaller lots is likely to require minimal setbacks, though this may already be the case for residential zones that allow small-lot detached development. Financially, our analysis shows that allowing larger unit sizes (in the 1,200 to 1,800 sf range) may improve feasibility, though average unit sizes larger than about 2,000 sf do not appear to improve feasibility under the conditions tested and are uncommon for attached housing of any kind. The higher FARs appear to offer the greatest benefits for the 3,000 and 5,000 sf lot examples, with less or no benefit for the 7,500 and 10,000 sf lot examples.

DATE: July 24, 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: Townhouse Feasibility Considerations for Middle Housing Model Code

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## 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 provides an evaluation of reasonable bounds for key development standards for townhouses. This evaluation is based on a detailed review of example townhouse developments statewide, rather than on analysis of hypothetical developments. This is because there are sufficient recent built examples for townhouse development to provide insights into the development scale and density that is workable in practice. The example developments were sourced from a combination of input from Model Code Technical Advisory Committee members and research by ECONorthwest, SERA Architects, and Angelo Planning Group.

## Observations and Recommendations by Topic

### Unit Size

#### Observations:

- The smallest observed unit size is about 900 square feet (sf), with roughly a 450 sf footprint. Nearly all units were at least 1,000 sf, and most were at least 1,200 sf.
- The most common sizes are between 1,200-1,800 sf with 2 floors of living space.
- Very few townhome developments with four or more units per building have units larger than 2,000 sf.
- There are more larger units in developments with just two attached units. (These also tend to be quite a bit more expensive, and have mostly been built in high-cost neighborhoods in Portland and prime locations in areas with a strong second home market.)
- In some cases, larger units were on larger lots, but this was not always the case.
- Below-grade living space is uncommon within the examples we reviewed, though at least one townhouse development had one floor of living space partially below grade, and several had tuck-under garages that were slightly below grade.

#### Recommendations:

- For minimum feasibility, ensure that regulations allow for at least a 1,200 sf unit size for townhouses.

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- To provide greater flexibility, allow for unit sizes up to 2,000 sf.
  - Do not link allowed floor area to lot size (e.g. through floor area ratio standards).

## Parking

### Observations:

- Most townhouses have a garage with a driveway. Single-car garages are more common than two-car garages overall among the examples we reviewed, though outside of Portland, there is a more even split.
- A few townhouses have no parking at all (all located in Portland among the examples we reviewed).
- Townhouse developments built as part of a greenfield development have a mix of alley and street access. Infill development mostly has street access or a shared driveway (or no parking).

### Recommendations:

- For minimum feasibility, do not require more than one parking space per unit.
- For greater flexibility, allow parking within the front setback (in a driveway) and on-street parking abutting the development to count towards the parking requirement.
- For maximum flexibility, do not require parking, and do not restrict development from providing two garage spaces if desired.

## Lot size and Density

### Observations:

- The smallest observed lot size (highest observed density) is 6 units on a 5,000 sf lot (833 sf per unit) in Portland with no parking and no yard or shared open space. There were other examples in the Portland suburbs (including in both Gresham and Washington County's North Bethany area) with lots under 900 sf and no yard but with garage parking and a shared driveway.
- The largest observed lot size is between 2,600 and 4,000 sf within a single development, but this includes a private road. The usable lot area for the development is closer to 2,000 to 3,700 sf. Buildings each had two attached townhouse units, which increases lot size relative to buildings with more units attached due to side yards, and some have deeper lots with larger yards due to site configuration.
- Most townhouses have between 1,200 and 3,000 sf per unit.

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## Recommendations:

- For minimum feasibility, do not require more than 3,000 sf of land per unit (on average for the development) in any zone. This might be appropriate in zones with larger minimum lot sizes for single family homes (e.g. 12,000 sf, allowing 4 townhouse units).
- To encompass the most likely townhouse development, allow townhouses on lots as small as 1,200 sf (on average for the development). This would translate to roughly 4 units on a 5,000 sf lot.
- For maximum flexibility, allow lots as small as 800 sf (on average for the development) in zones with lower minimum lot sizes for single family homes (e.g. under 3,000 sf).

## Height

### Observations:

- Development examples were roughly split between two-story and three-story townhouses. A few had three and a half stories, or had a lofted top floor ceiling that made them appear to be four stories.
- Nearly all townhouses that have a garage for parking are at least two and a half stories tall (sometimes the garage was partly below grade).

### Recommendations:

- For minimum feasibility, allow at least two and a half stories in all zones.
- For greater flexibility, allow three full stories (or more, if allowed for single family homes).



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MEMORANDUM

## Large & Metro Cities Model Code Parts 1 – 3 (REVISED DRAFT); Part 4 (INITIAL DRAFT) DLCD Middle Housing Model Code

DATE July 28, 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

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### Commentary:

This memorandum combines all parts (1 – 4) 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, 5, 6, and 7 and Rulemaking Advisory Committee (RAC) meetings 5, 6, 7, and 8.
- **Chapter 2. Duplexes (Part 2).** This chapter includes proposed standards for duplexes and is the same as the draft Medium Cities Model Code. The draft has been revised to reflect the updated definition of duplex.
- **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, 6, and 7 and RAC 6, 7, and 8.
- **Chapter 4. Townhouses (Part 3).** This chapter includes proposed standards for townhouses. The draft code provisions have been revised following review at MCTAC 5, 6, and 7 and RAC 6, 7, and 8.
- **Chapter 5. Cottage Clusters (Part 4).** This chapter includes an initial draft of cottage cluster standards. This initial draft follows a review of the cottage cluster code concepts memo at MCTAC 7 and RAC 8.

The tables in Chapters 1 – 5 of the draft model code 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 DLCDC 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

*Commentary: New definitions associated with cottage cluster standards are included with Chapter 5, for ease of review.*

Standard	Model Code	Minimum Compliance	Commentary
<p><b>A. Purpose</b></p>	<p>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.</p>	<p>Local governments are not required to include a purpose statement specific to provisions needed to implement and comply with HB 2001.</p>	
<p><b>B. Definitions</b></p>	<p>The following definitions shall apply for the purposes of this code, notwithstanding other definitions in the development code:</p>	<p>--</p>	<p>--</p>
<p>1. “Common wall”</p>	<p>“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.</p>	<p>No requirement, as long as definitions ensure consistent application of middle housing standards.</p>	<p><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).</i></p>
<p>2. “Goal Protected Lands”</p>	<p>“Goal Protected Lands” means lands protected or designated pursuant to the following statewide planning goals:</p> <ul style="list-style-type: none"> <li>• <a href="#">Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces</a>;</li> <li>• <a href="#">Goal 6 Air, Water, and Land Resource Quality</a></li> <li>• Goal 7 Areas Subject to Natural Hazards;</li> <li>• Goal 15 Willamette River Greenway;</li> <li>• Goal 16 Estuarine Resources;</li> <li>• Goal 17 Coastal Shorelands;</li> <li>• Goal 18 Beaches and Dunes.</li> </ul>	<p>For the purposes of determining areas in which triplexes, quadplexes, townhouses, and cottage clusters must be allowed, local governments may exclude “Goal Protected Lands”.</p>	<p><i>This definition is proposed to establish areas where middle housing (besides duplexes) is <u>not</u> permitted by the model code, and was updated following MCTAC 6.</i></p>
<p>3. “Cottage cluster”</p>	<p>“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. <a href="#">Cottage cluster may also be known as “cluster housing,” “cottage housing,” or “pocket neighborhood.”</a></p>	<p>Local governments must have a definition for cottage clusters <a href="#">(or one of the alternative terms, such as cluster housing)</a> 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</p>	<p><i>Update since MCTAC 7: We added to the definition to reference some of the other terms used for cottage clusters.</i></p> <p><i>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>.</i></p>

Standard	Model Code	Minimum Compliance	Commentary
		less than 900 SF. The definition may provide greater flexibility than the model code, including allowing individual units on separate lots.  <i>(See additional information in commentary.)</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 two dwelling units on a lot or parcel in any configuration. In instances where a development can meet the definition of a duplex and also meets the definition of a primary dwelling unit with an accessory dwelling unit (ADU), the applicant shall specify at the time of application review whether the development is considered a duplex or a primary dwelling unit with an 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.	<i>This definition is consistent with 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: <ul style="list-style-type: none"> <li>• Areas where the elevation of the floor is 4 feet or more below the adjacent right-of way;</li> <li>• Roof area, including roof top parking;</li> <li>• Roof top mechanical equipment; and</li> <li>• 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.</li> </ul>	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>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 includes garages 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. FAR is calculated by dividing the total floor area (as defined in Section (B)(6)) of all buildings on a site by the total site area, after dedication of public rights-of-way and/or designation of private rights-of-way.	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 7: Additional detail about how FAR is calculated was added to the definition, per suggestion from the MCTAC.</i>
<a href="#">8. “Frontage”</a>	<a href="#">“Frontage” means the portion of a lot or parcel that abuts a street.</a>	<a href="#">A definition of frontage is required if a local government applies standards related to lot/parcel frontages.</a>	<i>Update since MCTAC 7: “Frontage” is used in a few model code standards, but may be defined differently by different jurisdictions. The term is defined here to ensure the standards are clear and objective.</i>

Standard	Model Code	Minimum Compliance	Commentary
<p><a href="#">89</a>. “Infrastructure-constrained lands”</p>	<p>“Infrastructure-constrained lands” <u>means areas where it is not feasible to provide acceptable water, sewer, storm drainage, or transportation services to serve new triplexes, quadplexes, townhomes, or cottage cluster development as defined by OAR 660-046-0320(1) and the thresholds identified in OAR 660-046-0340; where the local government is not able to correct the infrastructure limitation by utilizing the process outlined in OAR 660-046-0300 through 660-046-0370 due to cost, jurisdictional, or other limitations; and which cannot be remedied by future development of middle housing on the subject lot or parcel.</u><del>means lots or parcels that are not currently served by water, sewer, storm drainage, or transportation services; and where the local government is not able to correct the infrastructure limitation with an Infrastructure Based Time Extension Request (IBTER) due to jurisdictional, cost, or other limitations; and which cannot be remedied by future development of middle housing on the subject lot or parcel.</del></p>	<p>For the purposes of determining areas in which triplexes, quadplexes, townhomes, and cottage clusters must be allowed, local governments may exclude “infrastructure constrained lands”.</p>	<p><i>This definition is proposed to establish another type of area where middle housing (besides duplexes) is <u>not</u> permitted by the model code.</i></p> <p><i>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.</i></p>
<p><a href="#">910</a>. “Lot or parcel”</p>	<p>“Lot or parcel” means any legally created unit of land.</p>	<p>Local governments must have a definition for lot and/or parcel that is the same as, or similar to, the model code definition.</p>	
<p><a href="#">1011</a>. “Middle housing”</p>	<p>“Middle housing” means duplexes, triplexes, quadplexes, cottage clusters, and townhouses.</p>	<p>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.</p>	<p><i>HB 2001 provides the definition of “middle housing.”</i></p>
<p><a href="#">1112</a>. “Quadplex”</p>	<p><b>PREFERRED OPTION (2):</b> “Quadplex” means four dwelling units on a lot or parcel in any configuration.</p>	<p>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.</p>	<p><i>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.</i></p>
<p><a href="#">1213</a>. “Townhouse”</p>	<p>“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.”</p>	<p>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.</p>	<p><i>HB 2001 provides the definition of “townhouse.”</i></p>
<p><a href="#">1314</a>. “Triplex”</p>	<p><b>PREFERRED OPTION (2):</b> “Triplex” means three dwelling units on a lot or parcel in any configuration.</p>	<p>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.</p>	<p><i>See commentary for “quadplex” above.</i></p>
<p><a href="#">1415</a>. “Townhouse project”</p>	<p>“Townhouse project” means one or more townhouse structures constructed, or proposed to be constructed, together with the</p>	<p>Local governments may, but are not required to, have a definition for townhouse project.</p>	<p><i>This definition describes an overall townhouse development, as opposed to individual townhouse units. Some development standards in Chapter 4</i></p>

Standard	Model Code	Minimum Compliance	Commentary
	development site where the land has been divided, or is proposed to be divided, to reflect the townhouse property lines and the commonly owned property, if any.		<i>apply to the townhouse project overall, whereas others apply to individual units or lots.</i>
<p><del>4516</del>. “Zoned for residential use”</p>	<p>“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.</p>	<p>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.</p>	<p><i>This definition clarifies that the middle housing requirement only applies in residential zones. This is further clarified in the Applicability section.</i></p>
<p><b>C. Applicability</b></p>	<p>--</p>	<p>--</p>	<p>--</p>
<p>1. <u>Applicability of Code Sections.</u></p>	<p>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></p> <p>b. Code standards applicable to specific housing types are listed below:</p> <ul style="list-style-type: none"> <li>• Duplexes: <i>Chapter 2.</i></li> <li>• Triplexes: <i>Chapter 3.</i></li> <li>• Quadplexes: <i>Chapter 3.</i></li> <li>• Cottage clusters: <i>[list sections here].</i></li> <li>• Townhouses: <i>Chapter 4.</i></li> </ul>	<p>N/A</p>	<p><i>This subsection of Applicability states which sections of the model code are applicable to each type of housing.</i></p>
<p>2. <u>Applicability by Development Type and Location.</u></p>	<p>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:</p> <ul style="list-style-type: none"> <li>• New duplexes and those created through conversion of existing detached single family dwellings.</li> <li>• New triplexes, quadplexes, cottage clusters, and townhouses, and those created through conversion of existing detached single family dwellings or duplexes.</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>• On goal-protected or infrastructure-constrained lands, 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.</li> </ul>	<p><b>Duplex</b> – 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.</p> <p><b>Other Housing Types</b> – As with the model code, 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. Local governments may use additional criteria to regulate where middle housing (other than duplexes) is allowed including but not limited to goal-protected and infrastructure-constrained lands.</p>	<p><i>This subsection establishes the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Identifies <u>where</u> within “areas zoned for residential use” middle housing must be allowed.</i> <ul style="list-style-type: none"> <li>○ <i>Clarifies that the provisions only apply in residential zones in which detached single family dwellings are permitted.</i></li> <li>○ <i>Per HB 2001, duplexes must be allowed on all residential lots and parcels that allow SFD.</i></li> <li>○ <i>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.</i></li> </ul> </li> <li>• <i>Indicates that the standards apply to new construction as well as conversions of single family detached homes.</i></li> <li>• <i>For lots or parcels within goal protected or infrastructure-constrained lands, which only allow a duplex, the model code does not allow for</i></li> </ul>

Standard	Model Code	Minimum Compliance	Commentary
	<ul style="list-style-type: none"> <li>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.</li> </ul>	<p><u>See draft OARs for further clarification on Applicability of middle housing types.</u></p>	<p><i>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.</i></p>
<p><b>D. Relationship to Other Regulations</b></p>	<p>--</p>	<p>--</p>	<p>--</p>
<p>1. <u>Conflicts.</u></p>	<p>In the event of a conflict between this code and other standards applicable to a middle housing development, the standards of this code control.</p>	<p>No specific requirement, as long as local governments address conflicts in the development code.</p>	<p><i>Proposed language is the same as the draft Medium Cities Model Code, except it refers to all middle housing.</i></p>
<p>2. <u>Public Works Standards.</u></p>	<p>Clear and objective exceptions <u>(as required by ORS 197.307(4))</u> to public works standards granted to single family dwellings shall also be granted to duplexes.</p>	<p><b>Duplex</b> – If a local government or other utility service provider grants clear and objective exceptions to public works standards <u>(as required by ORS 197.307(4))</u> to single family detached development, those same exceptions must also be granted to duplexes permitted under this section. <i>(draft OAR 660-046-0105.7 for Med Cities)</i></p> <p><b>Other Housing Types</b> – <del>N/A</del><u>if other middle housing types are created as a result of a conversion of an existing single family detached dwelling, the property must be allowed the same clear and objective exceptions to public works standards as applied to single family detached development.</u></p>	<p><i>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.</i></p>
<p>3. <u>Protective Measures.</u></p>	<p>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).</p>	<p>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.</p>	<p><i>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.</i></p>

## Chapter 2. Duplexes

**Sections:**

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

Standard	Model Code	Minimum Compliance
<b>A. Permitted Uses and Approval Process</b>	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>B. Development Standards</b>	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>
<b>C. Design Standards</b>	<p><i>Update since MCTAC 7: Because the duplex definition was revised to allow detached units, we added an exemption from design standards for facades separated from the street by another dwelling. This is consistent with the approach for triplexes and quadplexes.</i></p> <p>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. <a href="#">Facades of dwellings that are separated from the street property line by another dwelling are exempt from meeting building design standards.</a></p> <p>Any design standards that apply only to duplexes are invalid.</p>	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
<p><b>D. Duplex Conversions</b></p>	<p>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.</p>	<p><i>Identical to model code language.</i></p>

### 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
<p><b>A. Permitted Uses and Approval Process</b></p>	<p><i>Commentary: Proposed language is the same as the draft Medium Cities Model Code, except with references to triplexes and quadplexes.</i></p> <p><i>Note: We heard a concerns from the MCTAC about saying middle housing is “permitted outright” but also “subject to same approval process as that for detached single family dwellings.” We also heard concerns about saying middle housing is “subject <u>only</u> to clear and objective standards,” but also referencing an alternative discretionary process. However, the same wording is used in the draft Medium Cities Model Code, which has been vetted by the Department of Justice. Therefore, we do not recommend any changes.</i></p> <p>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.</p>	<p>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 <a href="#">ORS 197.307(4)</a><del>ORAR 660-008-0015</del>.</p>
<p><b>B. Development Standards</b></p> <p>1. <u>Applicability</u>.</p>	<p><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></p> <p>a. Triplexes and quadplexes shall meet:</p> <ul style="list-style-type: none"> <li>• The standards in subsections (2) through (9) of this section (B).</li> </ul>	<p>Local governments are not required to have an applicability statement.</p>

	<ul style="list-style-type: none"> <li>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).</li> </ul> <p>b. The following standards are invalid and do not apply to triplexes or quadplexes allowed by this code:</p> <ul style="list-style-type: none"> <li>Maximum lot coverage or minimum landscape area standards.</li> <li>The jurisdiction’s development standards that apply only to triplexes, quadplexes, or multifamily development.</li> </ul>	
<p>2. <u>Number of Units.</u></p>	<p><i>Commentary: 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></p> <p>This code does not allow for the creation of more than four (4) dwelling units on a lot, including accessory dwelling units.</p>	<p>Local governments may allow more than four units on a lot, if they so choose.</p>
<p>3. <u>Minimum Lot Size.</u></p>	<p><i>Commentary: Based on comments from the MCTAC and analysis by ECONorthwest (ECONW) 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.) ECONW’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><b>RECOMMENDED OPTION (1):</b> 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.</p> <p><i>[Options 2 – 4 removed]</i></p>	<p><b>Update since MCTAC 7:</b> The minimum compliance standard has been revised so that cities with smaller minimum lot sizes (<del>&lt; 5,000 sf</del>) can require larger lots for triplexes and quadplexes. However, any zones with larger minimum lot sizes (<del>5,000+ sf</del>) could not require larger lots for triplexes or quadplexes.</p> <p><u>For Triplexes:</u></p> <p>i. <u>If the minimum lot or parcel size for a detached single-family dwelling is less than 5,000 square feet, a Large City may limit triplexes to lots or parcels 5,000 square feet or greater.</u></p> <p>ii. <u>If the minimum lot or parcel size for a detached single-family dwelling is 5,000 square feet or greater, a Large City may apply the same minimum lot or parcel size or a lesser lot or parcel size to triplexes.</u></p> <p><u>For Quadplexes:</u></p> <p>i. <u>If the minimum lot or parcel size for a detached single-family dwelling is less than 7,000 square feet, a Large City may limit quadplexes to lots or parcels 7,000 square feet or greater.</u></p> <p>ii. <u>if the minimum lot size for a detached single-family dwelling is 7,000 square feet or greater, a Large City may apply the same minimum lot or parcel size or a lesser lot or parcel size to quadplexes.</u></p> <p><del>be in zones where the minimum lot size for a detached single family dwelling is:</del></p>



		<p><del>— Less than 5,000 sf: the minimum lot size for a triplex or quadplex must not exceed [150% / 200%] of the minimum lot size for a detached single family dwelling.</del></p> <ul style="list-style-type: none"> <li><del>• 5,000 sf or more: The minimum lot size for a triplex or quadplex must not exceed the minimum lot size for a detached single family dwelling in the same zone.</del></li> </ul>
4. <u>Minimum Lot Width.</u>	<p><b>Commentary:</b> <i>The project team recommends deferring to the jurisdiction’s standards for detached single family dwellings.</i></p> <p><b>RECOMMENDED OPTION (1):</b> 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.</p>	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>	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.	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. <i>(consistent with draft OAR 660-046-0120.2 for Med Cities)</i>
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>	<p><b>Update since MCTAC 7:</b> <i>For townhouses, we increased the cap on maximum height to 35’ or 3 stories, based on MCTAC feedback and recommendations following ECONW’s feasibility analysis. For the sake of consistency, we propose the same change for triplexes and quadplexes. This is consistent with the height limit in single-family zones in most cities. We also propose deferring to the local jurisdiction’s definition and calculation method for building height, rather than defining how height is measured in the model code. Imposing a different height calculation method for middle housing than that which applies to other development would make the model code more difficult to implement.</i></p> <p>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 <del>25-35</del> feet or <del>two-three</del> stories is invalid. <a href="#">Building height is measured in accordance with the development code.</a></p>	Triplexes and quadplexes may not be subject to lower maximum height standards than those applicable to detached single family structures in the same zone, except a maximum height of less than 25 feet or two stories is invalid.
<b>8. OPTIONS FOR REGULATING SCALE / BULK:</b>		
<p><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></p> <p><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></p>		<p><b>Commentary:</b> <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 has draft OAR language that defines the minimum compliance standards for scale and bulk.</i></p>

<p><b>RECOMMENDED OPTION (2):</b> Maximum Floor Area Ratio (FAR)</p>	<p><b>Update since MCTAC 7:</b> We continue to recommend scaling the allowable FAR for triplex/quadplex based on the minimum lot size in the zone. However, we increased the maximum FAR for zones with smaller minimum lot sizes (5,000 sf and below) to match the recommendations from Elizabeth Decker and others. ECONW did some additional analysis to test these alternate FAR figures. The analysis indicates that additional FAR does have the potential to increase feasibility for tri/quad development on smaller lots by allowing larger unit sizes—although the recommended maximum FAR may not always be achievable, based on the minimum setbacks found in this code and those for local jurisdictions.</p> <p>ECONW’s analysis <u>did not</u> indicate that higher FAR allowances on <u>larger lots</u> would improve feasibility. This is because unit sizes larger than about 2,000 sf are uncommon for this type of development and do not improve financial returns. Therefore, we recommend leaving the current FAR limits for zones with minimum lot sizes over 5,000 sf to continue to address potential massing or scale issues in those areas.</p> <p>It should also be noted that minimum lot sizes of 5,000 sf and below will capture <del>the majority</del> <u>a significant percentage</u> of single-family zones for Large and Metro Cities, and we recommend permitting higher FAR in these zones.</p> <p>[Option 2a removed]</p> <ul style="list-style-type: none"> <li><b>RECOMMENDED OPTION (2b):</b> 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:</li> </ul> <table border="1" data-bbox="699 937 1460 1346"> <thead> <tr> <th>Minimum Lot Size in Zone</th> <th>Maximum FAR</th> </tr> </thead> <tbody> <tr> <td>3,000 sf or less</td> <td><del>0.9 to 1</del> — Alt: 1.4 to 1</td> </tr> <tr> <td>More than 3,000 sf, up to and including 5,000 sf</td> <td><del>0.7 to 1</del> — Alt: 1.1 to 1</td> </tr> <tr> <td>More than 5,000 sf but less than 20,000 sf</td> <td>0.6 to 1</td> </tr> <tr> <td><del>Alt: 5,000 — 10,000 sf</del></td> <td>Alt: 0.9 to 1</td> </tr> <tr> <td><del>Alt: 10,000 sf or more</del></td> <td>— Alt: 0.5 to 1</td> </tr> <tr> <td>20,000 sf or more</td> <td>0.4 to 1</td> </tr> </tbody> </table>	Minimum Lot Size in Zone	Maximum FAR	3,000 sf or less	<del>0.9 to 1</del> — Alt: 1.4 to 1	More than 3,000 sf, up to and including 5,000 sf	<del>0.7 to 1</del> — Alt: 1.1 to 1	More than 5,000 sf but less than 20,000 sf	0.6 to 1	<del>Alt: 5,000 — 10,000 sf</del>	Alt: 0.9 to 1	<del>Alt: 10,000 sf or more</del>	— Alt: 0.5 to 1	20,000 sf or more	0.4 to 1	<p>See draft OARs.</p>
Minimum Lot Size in Zone	Maximum FAR															
3,000 sf or less	<del>0.9 to 1</del> — Alt: 1.4 to 1															
More than 3,000 sf, up to and including 5,000 sf	<del>0.7 to 1</del> — Alt: 1.1 to 1															
More than 5,000 sf but less than 20,000 sf	0.6 to 1															
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<del>Alt: 10,000 sf or more</del>	— Alt: 0.5 to 1															
20,000 sf or more	0.4 to 1															
<p>9. <u>Off-street Parking.</u></p>	<p><b>Update since MCTAC 7:</b> We continue to recommend Option 4, which is based on the results of the feasibility analysis by ECONW and SERA. 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 sf., as fitting the parking on site reduces the buildable area for housing and may not allow a reasonable average unit size.</p> <p>In the previous draft, we left a placeholder for the parking ratio in zones with a minimum lot size of 5,000 sf or more. With further input from ECONW, we’ve filled that in as two spaces but also added the on-street parking credit option.</p> <ul style="list-style-type: none"> <li><del>OPTION 1: No off-street parking is required for a triplex or quadplex.</del></li> <li><del>OPTION 2:</del></li> </ul>	<p><del>A. For Triplexes, a local government may require up to the following off-street parking spaces:</del></p> <ul style="list-style-type: none"> <li><del>i. For lots of 3,000 square feet or less: one space in total;</del></li> <li><del>ii. For lots greater than 3,000 square feet and less than or equal to 5,000 square feet: two spaces in total;</del></li> <li><del>iii. For lots greater than 5,000 square feet: three spaces in total.</del></li> </ul> <p><del>B. For Quadplexes, a local government may require up to the following off-street parking spaces:</del></p> <ul style="list-style-type: none"> <li><del>i. For lots of 3,000 square feet or less: one space in total;</del></li> <li><del>ii. For lots greater than 3,000 square feet and less than or equal to 5,000 square feet: two spaces in total;</del></li> <li><del>iii. For lots greater than 5,000 square feet and less than or equal to 7,000 square feet: three spaces in total;</del></li> <li><del>iv. For lots greater than 7,000 square feet: four spaces in total.</del></li> </ul> <p><del>Triplex — number of</del></p>														

	<p><del>a. <u>Required Off-street Parking.</u> The minimum number of required off-street parking spaces is:</del></p> <p><del>i. <u>For a triplex, one (1) space;</u></del></p> <p><del>ii. <u>For a quadplex, two (2) spaces.</u></del></p> <p><del>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.</del></p> <p><del>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.</del></p> <p><del>i. <u>On-street parking must be allowed on the side of the street where the space is to be provided.</u></del></p> <p><del>ii. <u>The space must be a minimum of 22 feet long;</u></del></p> <p><del>iii. <u>The space must be abutting the subject site; and</u></del></p> <p><del>iv. <u>The space must not obstruct a required sight distance area.</u></del></p> <p><i>[Option 3 removed]</i></p> <p>• <b><u>RECOMMENDED OPTION (4):</u></b></p> <p><u>a. Required Off-Street Parking.</u> The minimum number of required off-street parking spaces is <del>based on the minimum lot size for a detached single family dwelling in the same zone, as provided below:</del></p> <p><u>i. In zZones with a minimum lot size of less than 5,000 sf, one (1) off-street parking space per development.</u></p> <p><u>ii. In zZones with a minimum lot size of 5,000 sf or more, two (2)XX off-street parking spaces per development.</u></p> <p><u>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 detached single family home to a triplex or quadplex.</u></p> <p><u>b. 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.</p> <p><u>i. On-street parking must be allowed on the side of the street where the space is to be provided.</u></p> <p><u>ii. The space must be a minimum of 22 feet long;</u></p> <p><u>iii. The space must be abutting the subject site; and</u></p> <p><u>iv. The space must not obstruct a required sight distance area.</u></p>	<p><del>Quadplex—number of n</del></p> <p>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></p> <p><u>A local jurisdiction may allow but may not require off-street parking to be provided as a garage or carport.</u></p> <p><u>A local jurisdiction must apply the same off-street parking access and circulation standards that apply to single-family detached dwellings in the same zone</u></p>
<p><b>C. Design Standards</b></p> <p>1. <u>Applicability.</u></p>	<p><i><b>Commentary:</b> 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.</i></p>	<p><i><b>Commentary:</b> 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.</i></p>

	<p>a. New triplexes and quadplexes, including those created by adding building square footage on a site occupied by an existing dwelling, shall meet:</p> <ul style="list-style-type: none"> <li>• The design standards in subsections (2) through (5) of this section (C); and</li> <li>• 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).</li> </ul> <p>b. The following standards are invalid and do not apply to triplexes or quadplexes allowed by this code:</p> <ul style="list-style-type: none"> <li>• Mandates for construction of a garage or carport.</li> <li>• Any design standards that apply only to triplexes, quadplexes, or multifamily development.</li> </ul>	
<p>2. <u>Entry Orientation.</u></p>	<p><i>Commentary: The project team’s recommended approach to entry orientation offers flexibility by allowing units the option of facing the street, being at a 45 degree angle from the street, facing a common open space, or facing a porch. It also exempts units separated from the street by other units from having to meet the standard.</i></p> <p><i>[Options 1, 2 &amp; 4 removed]</i></p> <ul style="list-style-type: none"> <li>• <b>RECOMMENDED OPTION (3):</b> At least one main entrance for each triplex or quadplex structure that is not separated from the street property line by a dwelling must:             <ol style="list-style-type: none"> <li>a. Be within 8 feet of the longest street-facing wall of the dwelling unit; and</li> <li>b. Either:                 <ol style="list-style-type: none"> <li>i. Face the street;</li> <li>ii. Be at an angle of up to 45 degrees from the street;</li> <li>iii. Face a common open space that is adjacent to the street; or</li> <li>iv. Open onto a porch. The porch must:                     <ol style="list-style-type: none"> <li>(A) Be at least 25 square feet in area; and</li> <li>(B) Have at least one entrance facing the street or have a roof.</li> </ol> </li> </ol> </li> </ol> </li> </ul> <p style="text-align: center;"><i>Figure 1. Options for Entrance Standards, City of Portland</i></p>	<p><u>See draft OARs.--</u></p>

	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><b>Figure 110-5</b> Main Entrance Facing the Street</p> </div> <div style="text-align: center;"> <p><b>Figure 110-6</b> Main Entrance Opening onto a Porch</p> </div> </div>	
<p>3. <u>Windows.</u></p>	<p><b>Commentary:</b> We suggest a modest minimum window coverage standard for triplexes and quadplexes. Windows help create more interesting facades as well as enabling more “eyes on the street,” which can have benefits for public safety in residential areas, and allowing more natural light into the interior of the home. We recommend exempting facades separated from the street by another dwelling.</p> <p>A minimum of 15 percent of the area of all street-facing facades 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 that moves and does not include the frame. Facades separated from the street property line by a dwelling are exempt from meeting this standard.</p>	<p><u>See draft OARs.</u></p>
<p>4. <u>Garages and Off-street Parking Areas.</u></p>	<p><b>Update since MCTAC 7:</b> The team continues to recommend Option 2, but we’ve modified the standard to be clearer and more flexible. The proposed revisions remove the 40’ maximum width for garages and parking areas, thereby regulating the width of these features by percent of lot frontage only. The revisions also clarify that this limitation applies to any lot frontage, not just the “front yard.” A definition of “frontage” was also added in Chapter 1.</p> <p>The way in which vehicle parking is integrated into a development has a substantial impact on the appearance of the development from the street. We propose standards that limit the width of parking areas and/or garages. The intent is to promote a pedestrian-friendly environment by limiting the dominance of vehicle storage on the site.</p> <ul style="list-style-type: none"> <li>• <del>OPTION 1:</del> 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. Note: We may need to include the method of measurement if this option is selected.)</i></li> <li>• <b>RECOMMENDED OPTION (2) (modified):</b> Garages <del>on the front facade</del> and off-street parking areas <del>in the front yard are permitted</del> shall not be located between a building and a public street (other than an alley), <del>except</del> in compliance with the standards in subsections (a) and (b) of this subsection (C)(4).             <ol style="list-style-type: none"> <li>a. <del>The Ggarages or and</del> off-street parking areas <del>that are is</del> separated from the street property line by a dwelling; <del>or are exempt from meeting these standards.</del></li> </ol> </li> </ul>	<p><u>See draft OARs.</u></p>

	<p><del>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</del></p> <p><del>b. The combined width of all garages and outdoor on-site parking and maneuvering areas does shall not exceed forty feet or a total of fifty percent of the street/lot frontage, whichever is less.</del></p> <p><del>• <b>OPTION 3: Garage Door Standards.</b> Garages that are separated from the street property line by a dwelling are exempt from meeting these standards.</del></p> <p><del>a. The maximum combined garage door width facing the street is 50 percent of the total building width.</del></p> <p><del>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:</del></p> <p><del>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.</del></p> <p><del>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.</del></p> <p><del>(Adapted from Bend’s standards for duplexes and triplexes.)</del></p>	
<p>5. <u>Driveway Approach.</u></p>	<p><i>Update since MCTAC 7: The only proposed change to the driveway approach standards is to remove the words “or improvable” in defining when lots must take access from an abutting alley. “Improvable” would be difficult to define in a clear and objective way that works universally.</i></p> <p><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></p> <p>Driveway approaches must comply with the following:</p> <ol style="list-style-type: none"> <li>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).</li> <li>b. Driveway approaches may be separated when located on a local street. If approaches are separated, they must meet the jurisdiction’s driveway spacing standards applicable to local streets.</li> <li>c. In addition, lots or parcels with more than one frontage must comply with the following:             <ol style="list-style-type: none"> <li>i. Lots or parcels must access the street with the lowest classification. For lots or parcels abutting an improved <del>or improvable</del> alley, access must be taken from the alley. <del>(Note: “improvable” may need to be defined for this standard to be clear and objective.)</del></li> <li>ii. Lots or parcels with frontages only on collectors and/or arterial streets must meet the jurisdiction’s access standards applicable to collectors and/or arterials.</li> </ol> </li> </ol>	<p><u>See draft OARs.</u></p>

	<p>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.</p>	
<p><b>D. Conversions to Triplex and Quadplex</b></p>	<p><i>Update since MCTAC 7: Per a suggestion from an MCTAC member, we added a provision that allows an increase in nonconformance of a tri/quad structure, if the local development has a process for allowing that. This is reflected in the draft cottage cluster standards as well.</i></p> <p>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, <a href="#">unless increasing nonconformance is otherwise permitted by the development code.</a></p> <p><a href="#">If Middle Housing is being created through the conversion of an existing single family detached dwelling, a Large City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must allow granting the same exceptions to Middle Housing.</a></p>	<p>Identical to model code language.</p>

## Chapter 4. Townhouses

### Sections

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

Standard	Model Code	Minimum Compliance
<p><b>A. Permitted Uses and Approval Process</b></p>	<p><i>Commentary: The draft provisions account for the fact that townhouses typically involve land divisions and the provisions reflect the different permitting processes associated with these developments.</i></p> <p>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. Creation of new lots or parcels as part of a townhouse project is subject to the applicable land division approval process. 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.</p>	<p>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 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.</p>

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<p><b>B. Development Standards</b></p> <p>1. <u>Applicability.</u></p>	<p><i>Commentary: These draft provisions address the relationship between a local jurisdiction’s platting requirements and the model code standards.</i></p> <p>a. Townhouses shall meet the standards in subsections (3), (4), (5), (7), (8), <u>(9) and (10)</u> <del>and (11)</del> of this section (B).</p> <p>b. Townhouse projects shall meet:</p> <ul style="list-style-type: none"> <li>The standards in subsections (2), (6), (9), (10), <u>and (11)</u>, <del>and (12)</del> of this section (B).</li> <li>Any applicable clear and objective platting standards, unless those standards conflict with this code.</li> </ul> <p>c. The following standards are invalid and do not apply to townhouses or townhouse projects allowed by this code, <u>unless otherwise noted in this section (B)</u>:</p> <ul style="list-style-type: none"> <li>Additional development standards of the applicable base zone related to the standards addressed under subsections (2) through (12) of this section (B).</li> <li>Development standards of the applicable base zone related to lot dimensions, lot coverage, or the siting or design of dwellings.</li> <li>The jurisdiction’s development standards that apply only to townhouses and that conflict with provisions of this code.</li> </ul>	<p>Local governments are not required to have an applicability section.</p>								
<p>2. <u>Maximum Number of Units.</u></p>	<p><i>Commentary: Our 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></p> <p><b>RECOMMENDED OPTION (1):</b> There is no maximum number of consecutively attached units per townhouse structure.</p> <p><i>[Options 2 &amp; 3 removed]</i></p>	<p><u>Local governments must require at least two attached townhouse units and must allow up to four attached townhouse units. A local government may allow five or more attached townhouse units.</u> <del>Local governments must require at least two attached townhouse units and must allow at least four attached townhouse units.</del></p>								
<p>3. <u>Minimum Lot Size.</u></p>	<p><i>Update since MCTAC 7: We recommend removing minimum lot size standards in favor of regulating maximum density. The initial model code draft attempted to limit density using minimum lot size. However, input from some MCTAC members suggested there should be more flexibility to allow smaller townhouse lots. Rather than applying an arbitrary minimum lot size, we suggest letting other factors (parent parcel size and shape, building size, and setbacks) determine townhouse lot sizes. On larger parent parcels where the townhouse lots do not occupy the full site, any remaining site area could be dedicated as shared open space tracts.</i></p> <p><i>[Option 1 removed]</i></p> <p><del>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:</del></p> <table border="1" data-bbox="646 1518 1541 1747"> <thead> <tr> <th data-bbox="646 1518 1081 1608"><u>Minimum Lot Size in Zone for a Detached Single Family Dwelling</u></th> <th data-bbox="1081 1518 1541 1608"><u>Minimum Lot Size for each Townhouse</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="646 1608 1081 1659">Less than 3,000 sf</td> <td data-bbox="1081 1608 1541 1659">1,400 sf</td> </tr> <tr> <td data-bbox="646 1659 1081 1709">3,000 sf or more but less than 5,000 sf</td> <td data-bbox="1081 1659 1541 1709">1,800 sf</td> </tr> <tr> <td data-bbox="646 1709 1081 1747">5,000 sf or more</td> <td data-bbox="1081 1709 1541 1747">2,000 sf</td> </tr> </tbody> </table>	<u>Minimum Lot Size in Zone for a Detached Single Family Dwelling</u>	<u>Minimum Lot Size for each Townhouse</u>	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	<p><u>A local jurisdiction is not required to apply a minimum lot size to townhouses, but if they choose to, the average minimum lot size may not be greater than 1,500 square feet. A local jurisdiction may apply separate minimum lot sizes for internal, external, and corner townhouse lots.</u> <del>See draft OARs.</del></p>
<u>Minimum Lot Size in Zone for a Detached Single Family Dwelling</u>	<u>Minimum Lot Size for each Townhouse</u>									
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									



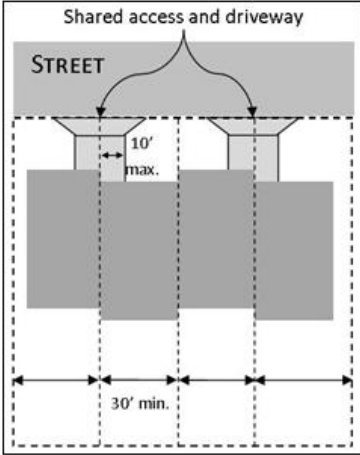
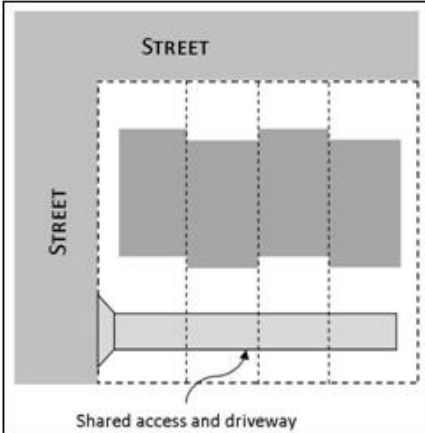
Standard	Model Code	Minimum Compliance												
	<p><del>OPTION 3:</del> The minimum lot size for each townhouse is based on the GFA of each townhouse and the minimum lot size for a detached single family dwelling in the same zone, as provided below:</p> <table border="1" data-bbox="646 324 1970 606"> <thead> <tr> <th data-bbox="646 391 1090 459">Minimum Lot Size in Zone for a Detached Single Family Dwelling</th> <th data-bbox="1090 338 1535 459">GFA ≤ 800-sf Minimum Lot Size for each Townhouse</th> <th data-bbox="1535 338 1970 459">GFA &gt; 800-sf Minimum Lot Size for each Townhouse</th> </tr> </thead> <tbody> <tr> <td data-bbox="646 479 1090 510">Less than 3,000-sf</td> <td data-bbox="1090 479 1535 510">1,400-sf</td> <td data-bbox="1535 479 1970 510">xx-sf</td> </tr> <tr> <td data-bbox="646 530 1090 560">3,000-sf or more but less than 5,000-sf</td> <td data-bbox="1090 530 1535 560">1,800-sf</td> <td data-bbox="1535 530 1970 560">xx-sf</td> </tr> <tr> <td data-bbox="646 580 1090 610">5,000-sf or more</td> <td data-bbox="1090 580 1535 610">2,000-sf</td> <td data-bbox="1535 580 1970 610">xx-sf</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li data-bbox="562 641 1765 671">• <b>RECOMMENDED OPTION (4):</b> No requirement. <i>(Instead, limit development intensity by maximum density.)</i></li> </ul>	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	
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												
<p>4. <u>Minimum Lot Width.</u></p>	<p><b>Update since MCTAC 7:</b> For consistency with our recommended approach to minimum lot size, we recommend not requiring a minimum lot width.</p> <p><del>OPTION 1:</del> The minimum lot width for each townhouse is [15 / 20] feet.</p> <ul style="list-style-type: none"> <li data-bbox="562 842 1121 872">• <b>RECOMMENDED OPTION (2):</b> No requirement.</li> </ul>	<p><u>See below.</u></p>												
<p>5. <u>Minimum Street Frontage.</u></p>	<p><b>Update since MCTAC 7:</b> Our recommendation is to remove the street frontage requirement. This issue is covered through local regulations around creating legal, developable lots. Requiring public street frontage would also limit flexibility to allow access via private streets or accessways, which may make townhouse development on infill sites more feasible by allowing double-loaded or side-facing townhouses. Requirements for private streets and accessways would be dictated by the local jurisdictions’ platting standards. It should be noted that this approach may result in cases where a completely clear and objective path for approval of townhomes is not achieved if related platting, public works, or other standards ultimately applied to townhouse developments are not clear and objective. However, the model code standards themselves are clear and objective, and a clear and objective path could likely be achieved if each townhouse lot does have street frontage, even if not required by the model code.</p> <p><del>OPTION 1:</del> Townhouses must have public street frontage of no less than [15 / 20] feet.</p> <ul style="list-style-type: none"> <li data-bbox="562 1272 1106 1302">• <b>RECOMMENDED OPTION 2:</b> No requirement.</li> </ul>	<p><u>A Large City may allow frontage on private streets. Any minimum street frontage standard must not exceed 25% of the single-family detached frontage, or 20 feet, whichever is greater. A Large City is not required to allow townhomes on flag lots. Local governments may allow frontage on private streets. Any minimum street frontage standard must not exceed XX feet.</u></p>												
<p>6. <u>Maximum Density.</u></p>	<p><b>Update since MCTAC 7:</b> As noted under subsection (3) above, we recommend not requiring a minimum lot size for townhouses and limiting development intensity through maximum density. Our current recommended approach is similar to Option 2 from the last draft, which was intended to allow townhouse density commensurate with allowing a quadplex on a single family lot. Our new recommended approach (Option 3) rewords the standard to be more straightforward and also scales the allowable density based on minimum lot size in the zone. The majority of single family zones (with a minimum lot size of 5,000 sf or more) would be allowed four times the density for a townhouse project. This puts townhomes on an even footing with triplexes and quadplexes in these areas in terms of allowed units per the base zone’s minimum lot size for single-family detached homes. Zones with smaller minimum lot sizes would be allowed slightly less density in order to control the intensity of development on these small lots. Note that allowing two times the density in zones with very small minimum lot sizes (2,000 or 2,500 sf – which is very uncommon) is equivalent to allowing a duplex on these lots and is consistent with the typical size of townhomes in these areas.</p>	<p><u>If a Large City applies density maximums in a zone, it must allow four times the maximum density allowed for detached single family dwellings in the same zone for the development of Townhouses or 25 units per acre, whichever is less.</u></p>												

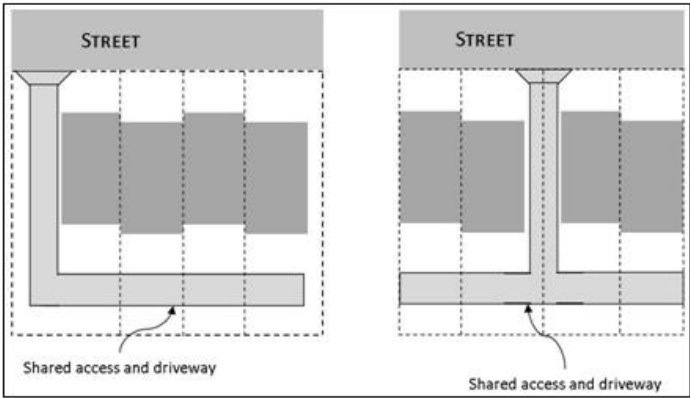
Standard	Model Code	Minimum Compliance
	<ul style="list-style-type: none"> <li>• <del>OPTION 1:</del> The maximum density for townhouse projects shall be determined by the minimum lot size as provided in subsection (3) of this section (B). The jurisdiction’s pre-existing density maximums do not apply.</li> <li>• <del>OPTION 2:</del> For the purposes of calculating density, four (4) townhouses shall count as a single unit.</li> <li>• <b>RECOMMENDED OPTION 3:</b> The maximum density for a townhouse project is follows:                             <ul style="list-style-type: none"> <li>○ In zones with a minimum lot size of [2,000 / 2,500] sf or less, townhouse projects are allowed two (2) times the allowed density for detached single family dwellings.</li> <li>○ In zones with a minimum lot size of more than [2,000 / 2,500] sf but less than 5,000 sf, townhouse projects are allowed three (3) times the allowed density for detached single family dwellings.</li> <li>○ In zones with a minimum lot size of 5,000 sf or more, townhouse projects are allowed four (4) times the allowed density for detached single family dwellings.</li> </ul> </li> </ul>	
<p>7. <u>Setbacks.</u></p>	<p><i>Commentary: 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></p> <p>Townhouses shall be subject to the following minimum and maximum setbacks:</p> <ul style="list-style-type: none"> <li>• <b>Front:</b> 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.</li> <li>• <b>Rear:</b> 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.</li> <li>• <b>Street Side:</b> 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.</li> <li>• <b>Interior Side:</b> <ul style="list-style-type: none"> <li>○ The setback for a common wall lot line where units are attached is zero (0) feet.</li> <li>○ The setback for an exterior wall at the end of a townhouse structure that faces an interior side lot line is five (5) feet.</li> </ul> </li> </ul>	<p>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.</p>
<p>8. <u>Height.</u></p>	<p><i>Update since MCTAC 7: Based on MCTAC feedback and recommendations following ECONW’s feasibility analysis, we increased the cap on maximum height so that a city must allow townhouses up to three stories or 35 feet. This is consistent with the height limit in single-family zones in most cities, where 30-35 feet is the most common maximum height. ECONW’s analysis indicated that where garage parking is provided, most townhouses will need three stories for the development to be feasible.</i></p> <p>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 <del>35</del>25 feet or <del>three</del>two stories is invalid. <u>Building height is measured in accordance with the development code.</u></p>	<p><i>Update since MCTAC 7: Updates to the minimum compliance standard reflect ECONW’s recommendations, which indicate that both requiring off-street parking and limiting height to less than three stories would be prohibitive to townhouse development.</i></p> <p>Townhouses may not be subject to lower maximum height standards than those applicable to detached single family structures in the same zone, <del>and</del> <u>if local governments’ mandate off-street parking, their</u> height standards must allow construction of at least <del>three</del>two stories. <u>If local governments do not mandate off-street parking, their height standards must allow construction of at least two stories.</u></p>

Standard	Model Code	Minimum Compliance
<p><del>109.</del> <u>Off-street Parking.</u></p>	<p><b>Update since MCTAC 7:</b> <i>Our recommended approach is to require one space per unit, with an on-street credit option. Spaces may be provided on individual lots or in shared parking areas. Shared parking opens up more on-street parking by reducing driveway curb cuts. Analysis by ECONW indicated that requiring one space per unit would not inhibit feasibility, especially if parking can be grouped, if on-street parking is an option, and if three stories are allowed, which makes garage parking more feasible.</i></p> <ul style="list-style-type: none"> <li><del>• <b>OPTION 1:</b> No off-street parking is required.</del></li> <li>• <b>RECOMMENDED OPTION (2) (modified):</b> <ul style="list-style-type: none"> <li>a. <u>Required Off-Street Parking.</u> The minimum number of required off-street parking spaces for a townhouse project is one (1) space per unit. <del>(Note: spaces could be</del> Spaces may be provided on individual lots or in a shared parking area on a common tract.) <u>A credit for on-street parking shall be granted for some or all of the required off-street parking as provided in subsection (b).</u></li> <li>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.                             <ul style="list-style-type: none"> <li>i. <u>On-street parking must be allowed on the side of the street where the space is to be provided.</u></li> <li>ii. <u>The space must be a minimum of 22 feet long;</u></li> <li>iii. <u>The space must be abutting the townhouse project site; and</u></li> <li>iv. <u>The space must not obstruct a required sight distance area.</u></li> </ul> </li> </ul> </li> <li><del>• <b>OPTION 3:</b> The minimum number of required off-street parking spaces for a townhouse project is 0.5 space per unit. (Same note as for Option 2.)</del></li> </ul>	<p>A local government may not require more than one off-street parking space per townhouse unit.</p> <p><u>Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.</u></p>
<p><del>110.</del> <u>Minimum Open Space and Landscaping.</u></p>	<p><b>Update since MCTAC 7:</b> <i>Based on input from the MCTAC, we recommend Option 3, which requires no minimum open space or landscaping. Open space would instead be managed through setback regulations. This would allow maximum flexibility, especially for small townhouse lots and for development on infill sites.</i></p> <ul style="list-style-type: none"> <li><del>• <b>OPTION 1:</b> 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.</del></li> <li><del>[Option 2 removed]</del></li> <li>• <b>RECOMMENDED OPTION (3):</b> No requirement.</li> </ul>	<p><b>Commentary:</b> <i>Following is an initial draft with arbitrary figures intended to spark discussion.</i></p> <p>A local government is not required to regulate minimum open space area and dimensions, but if they choose to, the minimum open space <u>standard</u> may not exceed <u>125%</u> of the minimum lot size <del>or xx sq ft, whichever is less,</del> 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.</p>
<p><del>1211.</del> <u>Areas Owned in Common.</u></p>	<p><b>Commentary:</b> <i>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.</i></p> <p>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.</p>	<p>No requirement.</p>
<p><u>12. Bulk / Scale</u></p>	<p><b>Commentary:</b> <i>No model code requirement. (Moved to the end of the Development Standards since it will be excluded from the final model code.)</i></p>	<p><b>Commentary:</b> <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.</i></p>

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		<p><i>DLCD is still developing OAR language that will limit the allowable bulk/scale controls so they do not cause unreasonable cost or delay. A Large City is not required to apply standards to control bulk and scale to new Townhouses. However, if a Large City chooses to regulate scale and bulk, including but not limited to provisions including lot coverage, floor area ratio, and maximum unit size, those standards cannot cumulatively or individually limit the bulk and scale of a townhouse project greater than that of a single family detached dwelling. See draft OARs.</i></p>
<p><b>C. Design Standards</b></p>	<p><i>Commentary: Our 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.</i></p> <p>New townhouses shall meet the design standards in subsections (1) through (4) of this section (C). No other design standards shall apply to townhouses.</p>	<p><i>See draft OARs. <del>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:</del></i></p> <ol style="list-style-type: none"> <li><i>1. Go through each type of design standard and set upper limits and parameters for what can be required/conditioned.</i></li> <li><i>2. Indicate that the design standards of the model code are a “reasonable” safe harbor for communities, and not try to define parameters.</i></li> </ol>
<p>1. <u>Entry Orientation.</u></p>	<p><i>Commentary: The proposed standard is consistent with the entry orientation standards for triplex/quadplex.</i></p> <p><i>[Option 1 removed]</i></p> <p><b>RECOMMENDED OPTION (2):</b> The main entrance of each townhouse must:</p> <ol style="list-style-type: none"> <li>a. Be within 8 feet of the longest street-facing wall of the dwelling unit; and</li> <li>b. Either:             <ol style="list-style-type: none"> <li>i. Face the street;</li> <li>ii. Be at an angle of up to 45 degrees from the street;</li> <li>iii. Face a common open space or private access or driveway; or</li> <li>iv. Open onto a porch. The porch must:                 <ol style="list-style-type: none"> <li>(A) Be at least 25 square feet in area; and</li> <li>(B) Have at least one entrance facing the street or have a roof.</li> </ol> </li> </ol> </li> </ol>	<p><i>See draft OARs.</i></p>
<p>2. <u>Unit definition.</u></p>	<p><i>Update since MCTAC 7: Per MCTAC suggestion, we added an option for a covered entryway.</i></p>	<p><i>See draft OARs.</i></p>

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	<p><i>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.</i></p> <p>Each townhouse must include at least one of the following on at least one street-facing facade:</p> <ul style="list-style-type: none"> <li>a. A roof dormer a minimum of 4 feet in width, or</li> <li>b. A balcony a minimum of 2 feet in depth and 4 feet in width and accessible from an interior room, or</li> <li>c. A bay window that extends from the facade a minimum of 2 feet, or</li> <li>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</li> <li>e. An entryway that is recessed a minimum of 3 feet, or</li> <li>f. <a href="#">A covered entryway with a minimum depth of 4 feet, or</a></li> <li>gf. A porch meeting the standards of subsection (1)(b)(iv) of this section (C).</li> </ul> <p>Balconies and bay windows may encroach into a required setback area.</p>	
<p>3. <u>Windows.</u></p>	<p><b>Commentary:</b> <i>The recommended window standard is the same as for triplex/quadplex.</i></p> <p>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.</p>	<p><i>See draft OARs.</i></p>
<p>4. <u>Driveway Access and Parking.</u></p>	<p><b>Update since MCTAC 7:</b> <i>We propose several changes to the draft driveway/parking design standards to:</i></p> <ul style="list-style-type: none"> <li>• <i>Exempt townhouses without frontage on a public street. Townhouses fronting a private street or accessway will instead be subject to local standards for platting, fire access, public works, etc.</i></li> <li>• <i>Clarify the definition of “driveway approach.”</i></li> <li>• <i>Revise dimensional standards to be a bit more flexible (allow narrower street frontage; allow wider driveways).</i></li> <li>• <i>Add options that would (1) allow individual driveways for all street-fronting townhouses, and (2) allow individual driveways only for narrower townhouse lots. The latter option would continue to require shared driveways for townhouses with wider lots, with the intent of ensuring there is room for one on-street parking space between shared driveways. (Note: If driveways are allowed to be 12’ wide, each lot would need to be at least 23’ wide to accommodate a 22’ on-street parking space. [(22’ ÷ 2 + 12’ = 23’)] With narrower lots, on-street parking would not be possible unless there is no driveway.</i></li> </ul> <p><i>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. (Note: The figures below are from the Milwaukie Municipal Code (MMC). We are working on new graphics that will depict driveways and parking areas that are more to-scale.)</i></p> <p><a href="#">Townhouses with frontage on a public street are subject to the following standards:</a></p> <ul style="list-style-type: none"> <li>a. Garages on the front façade of a townhouse, off-street parking areas in the front yard, and driveways <del>accesses</del> in front of a townhouse are prohibited unless the following standards are met. See Figure 1. <a href="#">For the purposes of this section (C)(4), “driveway approach” means the edge of a driveway where it abuts a public right-of-way.</a></li> <li>i. Each townhouse lot has a street frontage of at least <del>15</del> <a href="#">20</a> ft on a local street.</li> </ul>	<p><i>See draft OARs.</i></p>

Standard	Model Code	Minimum Compliance
	<p>ii. <b>OPTION 1:</b> A maximum of 1 driveway approach 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.</p> <p><b>OPTION 2:</b> A maximum of 1 driveway approach is allowed for every townhouse. Driveways may be shared.</p> <p><b>OPTION 3:</b> A maximum of 1 driveway approach is allowed for each townhouse with a street frontage less than [18 – 24] ft. A maximum of 1 driveway approach is allowed for every 2 townhouse units with a street frontage of [18 – 24] ft or more 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.</p> <p>iii. Outdoor on-site parking and maneuvering areas do not exceed {10/12} ft wide on any lot.</p> <p>iv. The garage width does not exceed {10/12} ft, as measured from the inside of the garage door frame.</p> <p style="text-align: center;"><i>Figure 1. Townhouse Development with Front Yard Parking (MMC Figure 19.505.5.F.1.)</i></p>  <p>b. The following rules apply to driveways and parking areas for townhouse projects that do not meet all of the standards in subsection (a).</p> <p>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.</p> <p>ii. A townhouse project that includes a corner lot shall take access from a single driveway approach on the side of the corner lot. See Figure 2.</p> <p style="text-align: center;"><i>Figure 2. Townhouse Development with Corner Lot Access (MMC Figure 19.505.5.F.2.b)</i></p> 	

Standard	Model Code	Minimum Compliance
	<p>iii. Townhouse projects development that does not include a corner lot shall consolidate access for all lots into a single driveway. The access and driveway and approach are not allowed in the area directly between the front façade and front lot line of any of the townhouses. See Figure 3.</p> <p style="text-align: center;"><i>Figure 3. Townhouse Development with Consolidated Access (MMC Figure 19.505.5.F.2.c)</i></p>  <p>iv. A townhouse development that includes consolidated access or shared driveways shall grant appropriate access easements to allow normal vehicular access and emergency access.</p> <p>c. Townhouse projects served by an alley providing access to the rear yards of all units are exempt from compliance with subsection (b).</p> <p><b>POTENTIAL ADDITIONAL STANDARDS:</b>  <i>A garage shall not extend closer to the street than the furthest forward living space on the street-facing facade. (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></p>	

## Chapter 5. Cottage Clusters

### Additional Definitions

**Commentary:** We propose adding several new definitions to Chapter 1 and a slight tweak to the “cottage cluster” definition. We included these here so they can be easily reviewed along with the draft cottage cluster standards, but the definitions will be merged with Chapter 1 in the next draft.

Standard	Model Code	Minimum Compliance	Commentary
<b>B. Definitions</b>	The following definitions shall apply for the purposes of this code, notwithstanding other definitions in the development code:	--	--
<i>Existing definition:</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. <a href="#">Cottage cluster may also be known as “cluster housing,” “cottage housing,” or “pocket neighborhood.”</a>	Local governments must have a definition for cottage clusters” <a href="#">(or one of the alternative terms, such as cluster housing)</a> 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 900 SF. The definition may provide greater flexibility than the model code, including allowing individual units on separate lots.  <a href="#">Nothing in the Model Code or Minimum Compliance standards precludes jurisdictions from allowing a similar form of housing in attached configurations.</a>  <i>(See additional information in commentary.)</i>	<b>Update since MCTAC 7:</b> We added to the definition to reference some of the other terms used for cottage clusters.  <i>HB 2001 provides the definition of “cottage cluster,” but the draft model code narrows the definition to mean detached units on a single lot. However, for minimum compliance with HB 2001, jurisdictions may provide greater flexibility as long as the minimum standards are met. Because HB 2001 defines cottage cluster housing as “detached units”, we have not provided an option for attached configurations in the Model Code or Minimum Compliance standards in an effort to avoid a direct conflict with the statutory language. However, that form of housing could be allowed using different terminology.</i>  <i>See additional commentary below.</i>

**Commentary – Single Lot vs. Individual Lots:** There is a desire for more middle housing types that are available for fee simple ownership—i.e., units sold on individual lots. However, we continue to recommend limiting the model code definition of cottage clusters to units on a single lot, but allowing cities amending their own codes to provide for units on individual lots. We have examined this issue closely, and we continue to believe that allowing individual cottage lots would add a potentially untenable level of complexity to the model code provisions. Because of the unique configuration of cottage clusters, which share common open space, access, and parking areas, a cottage cluster development on individual lots would necessitate a relatively complex land division process that includes cross-access agreements and shared tracts. As such, a “fee simple” ownership scheme for cottage clusters would not be especially “simple.” Further, many cities do not currently have land division standards that would adequately address these issues. Therefore, the model code would likely need to include subdivision provisions related to the following:

- Relationship of individual home lots to shared courtyard areas
- Use of private or public accessways with shared ownership or cross-access easements to access individual or shared parking areas
- Relationship of shared parking areas to individual home lots
- Internal and perimeter setbacks
- Relationship to the city’s other platting or subdivision standards

As a result, it would be very difficult to draft a set of model code standards that would work for every jurisdiction, given local variation in existing platting, subdivision, public works, and other standards. We also are concerned that cities ultimately will need to administer other local standards related to platting, access, and design of private accessways that may result in those projects being subject to an approval process that cannot be guaranteed to be clear and objective.

As such, we suggest keeping the model code simpler and easier to implement at the local level by limiting cottage clusters to be on a single lot. Units could still be individually owned as condominiums, which would still contribute to lower-cost homeownership options in single-family neighborhoods although we understand and acknowledge that the condominium ownership process can create challenges and barriers to development.



<b>New definitions:</b>			
“Building footprint”	“Building footprint” means the horizontal area as seen in plan, measured from outside of all exterior walls and supporting columns. It includes dwellings, garages, carports, and accessory structures, but not trellises, patios, and areas of porch, deck, and balcony less than 30 inches from finished grade, or cantilevered covers, porches or projections which do not have a post touching the ground or ramps and stairways required for access.	Local governments must have a definition of “footprint” or “building footprint” that is the same as, or similar to, the model code definition.	<i>HB 2001 specifies that units in a cottage cluster must have footprints of less than 900 sf, but it does not provide a definition of building footprint. This definition is proposed to define what portions of a building or structure are included in the building footprint. We propose including garages and carports in the footprint calculation, to limit the size of parking structures and to encourage clustered parking.</i>
“Common courtyard”	“Common courtyard” means a common area for use by residents of a cottage cluster. A common courtyard may function as a community yard. Hard and soft landscape features may be included in a common courtyard, such as lawn, groundcover, trees, shrubs, patios, benches, or gazebos. Pedestrian paths must be included as part of a common courtyard.	Local governments may, but are not required to, have a definition for common courtyard, as long as the standards for a shared courtyard or open space as part of a cottage cluster are clearly defined.	<i>HB 2001 specifies that cottage clusters must include a common courtyard. The model code definition is proposed to define what a common courtyard is in general terms. More specific standards for common courtyards are provided in Chapter 5.</i>
“Cottage”	“Cottage” means an individual dwelling unit that is part of a cottage cluster.	Local governments may, but are not required to, have a definition for cottage.	<i>Chapter 5 of the model code refers to individual units of a cottage cluster as cottages. This definition is simply meant remove any ambiguity about the meaning of that term.</i>
“Cottage cluster project”	“Cottage cluster project” means a development site with one or more cottage clusters. Each cottage cluster as part of a cottage cluster project must have its own common courtyard.	Local governments may, but are not required to, have a definition for cottage cluster project.	<i>This definition describes an overall cottage cluster development site, which may contain multiple clusters. What defines a cluster is that all the dwellings share a common courtyard. Therefore, a cottage cluster project with multiple clusters must also have multiple common courtyards.</i>

**Cottage Cluster Standards**

**Sections:**

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

<b>Standard</b>	<b>Model Code</b>	<b>Minimum Compliance</b>
<b>A. Permitted Uses and Approval Process</b>	<p><i>Commentary: Proposed language is the same as for duplexes, triplexes, quadplexes.</i></p> <p>Cottage cluster projects are permitted outright wherever they are allowed as provided in Chapter 1, Section C (Applicability). Cottage cluster projects 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, consistent with the requirements of ORS 197.307(4). Alternatively, an applicant may choose to submit an application for a cottage cluster project subject to discretionary standards and criteria adopted in accordance with ORS 197.307, if such a process is available.</p>	Local governments must permit cottage clusters 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 cottage clusters 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 cottage clusters pursuant to ORS 197.307(4).

Standard	Model Code	Minimum Compliance
<p><b>B. Development Standards</b></p> <p>1. <u>Applicability.</u></p>	<p><i>Commentary: This draft language is the same as the draft applicability statement for townhouse development standards, except without reference to platting standards. The intent is that the cottage cluster standards would override the base zone standards (except when the model code defers to the jurisdiction’s standards) and any existing cottage cluster standards that conflict with the model code.</i></p> <p>a. Cottage clusters shall meet the standards in subsections (2) through (9) of this section (B).</p> <p>b. The following standards are invalid and do not apply to cottage clusters allowed by this code, unless otherwise noted in this section (B):</p> <ul style="list-style-type: none"> <li>• Additional development standards of the applicable base zone related to the standards addressed under subsections (2) through (9) of this section (B).</li> <li>• Development standards of the applicable base zone related to lot dimensions, lot coverage, or the siting or design of dwellings.</li> <li>• The jurisdiction’s development standards that apply only to cottage clusters and that conflict with provisions of this code.</li> </ul>	<p>Local governments are not required to have an applicability statement.</p>
<p>2. <u>Number of Units.</u></p>	<p><i>Commentary: We are presenting three options for regulating the number of units. Option 1 is the most flexible and places no limits on the number of dwellings in a cottage cluster project. The scale of development could still be limited, but by other means, such as required frontage on the common courtyard. Option 2 regulates the number dwellings in an entire project. Option 3 regulates the number of dwellings per cluster, but does not regulate the number of dwellings in a project if there is more than one cluster.</i></p> <ul style="list-style-type: none"> <li>• <b>OPTION 1:</b> No minimum or maximum number of dwelling units.</li> <li>• <b>OPTION 2 (NOT RECOMMENDED):</b> A cottage cluster project must contain a minimum of three (3) and a maximum of twelve (12) dwelling units.</li> <li>• <b>OPTION 3:</b> Each cottage cluster sharing a common courtyard must contain a minimum of three (3) and a maximum of twelve (12) dwelling units. A cottage cluster project may contain more than one cottage cluster.</li> </ul>	<p>Local governments must allow at least <u>five</u> units in a cottage cluster. A local government must allow up to <u>eight</u> cottage units clustered around a common courtyard. Nothing in this section precludes a local government from allowing <u>fewer than five or greater than eight</u> units clustered around a common courtyard.</p>
<p>3. <u>Minimum Lot Size.</u></p>	<p><i>Commentary: We propose applying the same minimum lot size standard as applies to duplexes, triplexes, and quadplexes.</i></p> <p>The minimum lot size for a cottage cluster project is the same as the minimum lot size for a detached single family dwelling in the same zone.</p>	<p><i>The combination of minimum lot size and maximum density requirements may not result in an allowed density of less than four cottage cluster units per acre.</i></p> <p><i>A Large City is not required to apply minimum lot or parcel size standards to new Cottage Cluster developments. However, if a Large City chooses to regulate minimum lot size, those standards cannot be more restrictive than that of a single family detached dwelling in the same zone. Additional standards TBD.</i></p> <p><i>Please note: Cottage Cluster minimum compliance standards will need significant refinement by the TAC.</i></p>
<p>4. <u>Minimum Lot Width.</u></p>	<p><i>Commentary: We propose applying the same minimum lot dimension standards as apply to duplexes, triplexes, and quadplexes.</i></p>	<p>A minimum lot width standard is not required. However, if a jurisdiction applies a minimum lot width standard to cottage cluster development it may</p>

Standard	Model Code	Minimum Compliance
	<p>The minimum lot width for a cottage cluster project is the same as the minimum lot width for a detached single family dwelling in the same zone.</p>	<p>not be wider than the standard for a single-family detached dwelling in the same zone.</p>
<p>5. <u>Maximum Density.</u></p>	<p><b>Commentary:</b> <i>Option 1 allows the minimum lot size to determine maximum density. On larger lots that could fit numerous cottages, particularly in lower density base zones, this could result in much higher density than would otherwise be allowed. Option 2 limits density for cottage cluster development in a way that is comparable to allowing a quadplex on a single family lot. Option 3 is a hybrid of Options 1 and 2; it would limit density in zones with smaller minimum lot sizes, but would not limit density in zones with larger minimum lot sizes. This would be a way of incentivizing or “sweetening the deal” for development of cottage clusters in larger-lot zones over triplexes, quadplexes, and townhouses. Cottage clusters have the advantage of being more limited in scale and bulk than these other middle housing types, and may be more compatible with lower-density single family neighborhoods, even at higher densities.</i></p> <p><b>Note:</b> <i>Options 1 and 2, which allow higher densities, may pair well with limits on unit size, as discussed in subsection (7). <a href="#">If it is recommended, Option 3 may need to be refined, depending on which option is selected under subsections (2) and (3).</a></i></p> <ul style="list-style-type: none"> <li>• <b>OPTION 1:</b> The maximum density for a cottage cluster project 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.</li> <li>• <b>OPTION 2:</b> The maximum density for a cottage cluster project is four times the allowed density for detached single family dwellings in the same zone.</li> <li>• <b>OPTION 3:</b> The maximum density for a cottage cluster project is follows:             <ul style="list-style-type: none"> <li>○ In zones with a minimum lot size of less than 5,000 sf, cottage cluster projects are allowed four (4) times the allowed density for detached single family dwellings.</li> <li>○ In zones with a minimum lot size of 5,000 sf or more, the maximum density for a cottage cluster project shall be determined by the minimum lot size as provided in subsection (3) of this section (B) <a href="#">in combination with the maximum number of units allowed in a cottage cluster project under subsection (2) of this section (B)</a>. The jurisdiction’s pre-existing density maximums do not apply.</li> <li>○ <a href="#">The resulting maximum density shall not be less than four units per acre in any zone.</a></li> </ul> </li> </ul>	<p><a href="#">The combination of maximum density and minimum lot size requirements may not result in an allowed density of less than four cottage cluster units per acre.</a></p> <p><a href="#">For the purposes of calculating density, if a Large City applies density maximums in a zone, it may not apply those maximums to the development of Cottage Clusters. A cottage cluster development must meet a minimum density of at least four units per acre. <del>Additional standards TBD.</del></a></p> <p><a href="#">Please note: Cottage Cluster minimum compliance standards will need significant refinement by the TAC.</a></p>
<p>6. <u>Setbacks.</u></p>	<p><b>Commentary:</b> <i>We propose deferring to the base zone setbacks, except limiting the minimum front and rear setbacks to 10 feet. Larger setbacks than this could be prohibitive to cottage cluster development, particularly on smaller lots.</i></p> <p>Cottage clusters shall be subject to the same minimum and maximum setback standards that are applicable to detached single family dwellings in the same zone, except that minimum setbacks in excess of the following are invalid:</p> <ul style="list-style-type: none"> <li>• Front setbacks: 10 feet</li> <li>• Side setbacks: 5 feet</li> <li>• Rear setbacks: 10 feet</li> </ul> <p>The minimum distance between all structures, including accessory structures, shall be in accordance with building code requirements.</p>	<p>A local government may not require perimeter setbacks to be greater than those applicable to detached single family structures in the same zone. <i>(This will need to be expanded/refined.)</i></p>

Standard	Model Code	Minimum Compliance
<p>7. <u>Unit Size.</u></p>	<p><b>Commentary:</b> Cottages are typically intended as smaller units, and traditionally fall in scale somewhere between ADUs and single family homes. For example, jurisdictions with existing cottage cluster standards typically limit unit size (total floor area) to between 1,000 and 1,400 square feet. HB 2001 limits building footprints to 900 sf—which could result in a two-story cottage of roughly 1,800 sf or an even larger unit if additional height is allowed. As such, it may be desirable to further limit unit size. We’re presenting four options below; Options 2 through 4 could be combined, if desired. <u>Note 1:</u> The proposed definition of floor area in Chapter 1 includes garages in the calculation. The maximum unit size should factor this in, or could potentially exclude garages. <u>Note 2:</u> It may be especially desirable to limit unit size beyond the footprint/height limits if maximum density is not limited.</p> <ul style="list-style-type: none"> <li>• <b>OPTION 1:</b> No limit. (Allow maximum height and building footprint to control unit size. This is the most flexible option, but would not provide much in the way of a trade-off between unit size and density.)</li> <li>• <b>OPTION 2:</b> Maximum floor area: [1,200 – 1,600] sf per dwelling unit. (This is the least flexible option, but would ensure all units are limited in scale.)</li> <li>• <b>OPTION 3:</b> Maximum <u>average</u> floor area: [1,000 – 1,200] sf per dwelling unit. (This would allow flexibility for larger units in combination with smaller units while on average, requiring modestly sized units.)</li> <li>• <b>OPTION 4:</b> Total building footprint area for a cottage cluster: [10,800] sf. (This total footprint is the equivalent of 12 units with footprints of 900 sf each. This option would limit the overall scale of a cluster development while allowing flexibility for a larger number of small units [e.g., 18 units with footprints of 600 sf; 24 units with footprints of 450 sf.] A similar scheme could be done with total floor area, if that’s preferable. This option would offer the most flexibility of the four options. <u>Note:</u> This option would not work if density is limited to 4x the allowed density for the zone.)</li> </ul>	<p><u>A Large City may limit the size of dwellings in a Cottage Cluster, but must apply a maximum building footprint of 900 square feet per unit. Local governments may limit the size of dwellings in a cottage cluster, but must allow at least XX sf per unit.</u></p>
<p>8. <u>Maximum Height.</u></p>	<p><b>Commentary:</b> Height is another way to limit the size of cottage clusters, in addition to—or instead of—limiting unit floor area. Many cottage cluster codes limit height to 25 feet—we recommend that option, but we also included an option to defer to the maximum height for single family detached dwellings.</p> <ul style="list-style-type: none"> <li>• <b>RECOMMENDED OPTION 1:</b> 25 feet</li> <li>• <b>OPTION 2:</b> Cottages are subject to the same maximum height as applicable to detached single family dwellings in the same zone. (Note: If height is not limited to 25 feet, it may be preferable to limit unit floor area in order to control the size of individual units.)</li> </ul>	<p>Cottage clusters must be allowed a height of at least <u>25 feet one story.</u></p>
<p>9. <u>Off-Street Parking</u></p>	<p><b>Commentary:</b> We’ve presented two options below. Both options include an on-street credit and allow parking to be provided in shared parking areas.</p> <ul style="list-style-type: none"> <li>• Option 1 requires either 0.5 or 1 space per unit. Requiring 1 space per unit would align with the recommended approach for townhouses. However, there is a good case to be made for requiring fewer off-street parking spaces for cottage clusters than for townhouses, given that there is no size restriction on townhouses, it is easier to design them with off-street parking for each unit, and cottage clusters are generally intended/ marketed for smaller households. Requiring 0.5 spaces per unit would also put cottage clusters more on par with proposed requirements for triplexes and quadplexes, in terms of the relationship to detached single family dwellings.</li> </ul>	<p>A local government may not require more than one off-street parking space per dwelling in a cottage cluster.</p> <p><u>Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.</u></p>

Standard	Model Code	Minimum Compliance
	<ul style="list-style-type: none"> <li>• <i>Option 2 creates an incentive for smaller cottage units by applying a reduced parking ratio for cottages under a certain size.</i></li> <li>• <b>OPTION 1:</b> <ol style="list-style-type: none"> <li>a. <u>Required Off-Street Parking</u>. The minimum number of required off-street parking spaces for a cottage cluster project is [0.5 or 1] space per unit. Spaces may be provided for individual cottages or in shared parking clusters. A credit for on-street parking shall be granted for some or all of the required off-street parking as provided in subsection (b).</li> <li>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.                             <ol style="list-style-type: none"> <li>i. On-street parking must be allowed on the side of the street where the space is to be provided.</li> <li>ii. The space must be a minimum of 22 feet long;</li> </ol> </li> </ol> </li> <li>• <b>OPTION 2:</b> <ol style="list-style-type: none"> <li>a. <u>Required Off-Street Parking</u>. The minimum number of required off-street parking spaces for a cottage cluster project is [0 or 0.5] space per unit with a floor area less than [1,200] sf and [0.5 or 1] space per unit with a floor area of [1,200] sf or more. Spaces may be provided for individual cottages or in shared parking clusters. A credit for on-street parking shall be granted for some or all of the required off-street parking as provided in subsection (b).</li> <li>b. <u>On-Street Credit</u>. (same as Option 1)</li> </ol> </li> </ul>	
<p><b>D. Design Standards</b></p>	<p>Cottage clusters shall meet the design standards in subsections (1) through (7) of this section (C). No other design standards shall apply to cottage clusters unless noted in this section.</p>	
<p>1. <u>Cottage Orientation</u>.</p>	<p><i>Commentary: We recommend requiring that some or all cottages face the common courtyard. Requiring that only a percentage of cottages face the courtyard (e.g., 50%) would provide more flexibility for site layout, but the traditional layout is for cottages to be clustered around the same open space.</i></p> <ul style="list-style-type: none"> <li>• <b>OPTION 1:</b> All cottages must be oriented to a common courtyard.</li> <li>• <b>OPTION 2:</b> A minimum of [50%] of cottages must be oriented to a common courtyard. <i>(If this option is selected, the draft language below will be modified accordingly.)</i></li> </ul> <ol style="list-style-type: none"> <li>a. Cottages must be clustered around a common courtyard. Each cottage must have a main entrance facing the common courtyard, except that cottages within 20 feet of a street property line may have their entrances facing the street.</li> <li>b. Each cottage must be within 10 feet from the common courtyard, measured from the façade of the cottage to the nearest delineation of the common courtyard.</li> <li>c. Each cottage must be connected to the common open space by a pedestrian path.</li> </ol>	<p>See draft OARs.</p>
<p>2. <u>Common Courtyard Design Standards</u>.</p>	<p><i>Commentary: These recommended standards are intended to ensure that common courtyards provide useable, accessible space, but that flexibility for a range of courtyard designs and configurations are permitted. Some cottage cluster codes also require private open space in addition to common space, but we do not recommend additional space requirements that may be prohibitive to cottage cluster development.</i></p>	<p>See draft OARs.</p>

Standard	Model Code	Minimum Compliance
	<p>Each cottage cluster must share a common courtyard in order to provide a sense of openness and community of residents. Common courtyards must meet the following standards:</p> <ul style="list-style-type: none"> <li>a. The common courtyard must be a single, contiguous, useable piece.</li> <li>b. Cottages must abut the common courtyard on at least two sides of the courtyard.</li> <li>c. The common courtyard must contain a minimum of [200 - 400] sf per cottage within the associated cluster. <i>(400 sf per unit is a typical common open space requirement for cottage clusters, but may limit feasibility on smaller sites.)</i></li> <li>d. The common courtyard must be at least 15 feet wide at its narrowest dimension.</li> <li>e. The common courtyard shall be developed with a mix of landscaping and lawn area, recreational amenities, hard-surfaced pedestrian paths, and/or paved courtyard area. Impervious elements of the common courtyard shall not exceed [50%] of the total common courtyard area.</li> <li>f. Pedestrian paths qualify as part of a common courtyard. Parking areas, required setbacks, and driveways do not qualify as part of a common courtyard.</li> </ul> <p><b>ADDITIONAL OPTION:</b> Require at least one common courtyard in a cottage cluster project to be visible and accessible from an adjacent public street.</p>	
<p>3. <u>Community Buildings.</u></p>	<p><i><b>Commentary:</b> These provisions allow for shared community buildings as part of cottage cluster developments. We recommend limiting the size of community buildings in a way that is relatively consistent with size limits for dwelling units. Item (b) is intended to ensure that if a community building is converted into a dwelling, it will not be nonconforming to the model code standards. Alternatively, a property owner could record a covenant precluding future conversion to a dwelling. Such a covenant would ensure the owner does not have to pay SDCs or impact fees for the structure and that it does not count against maximum allowed density for the site. These costs significantly decrease the likelihood that such shared amenities ever get built.</i></p> <p>Cottage cluster projects may include community buildings for the shared use of residents that provide space for accessory uses such as community meeting rooms, guest housing, exercise rooms, day care, or community eating areas. Community buildings must meet the following standards:</p> <ul style="list-style-type: none"> <li>a. Each cottage cluster is permitted one community building that is a maximum of [1,200] sf in area.</li> <li>b. A community building that meets the development code’s definition of a dwelling unit must meet the maximum 900-st footprint limitation that applies to cottages, unless 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.</li> </ul>	<p>See draft OARs.</p>
<p>4. <u>Pedestrian Access.</u></p>	<p><i><b>Commentary:</b> These standards are recommended to ensure that all key areas of the site are connected by accessible pedestrian paths.</i></p> <ul style="list-style-type: none"> <li>a. An accessible pedestrian path must be provided that connects the main entrance of each cottage to the following: <ul style="list-style-type: none"> <li>i. The common courtyard;</li> <li>ii. Shared parking areas;</li> <li>iii. Community buildings; and</li> <li>iv. Sidewalks in public rights-of-way abutting the site or roadways if there are no sidewalks.</li> </ul> </li> <li>b. The pedestrian path must be hard-surfaced and a minimum of five (5) feet wide.</li> </ul>	<p>See draft OARs.</p>

Standard	Model Code	Minimum Compliance
<p>5. <u>Windows.</u></p>	<p><i><b>Commentary:</b> We recommend applying some form of window coverage standards to cottages. Option 1 is consistent with the standards for triplexes, quadplexes, and townhouses. Option 2 is consistent with the standards for duplexes, as it defers to a jurisdiction’s standards for single family homes. Option 3 could be combined with Options 1 or 2, and would apply the same window coverage standard for facades facing the common courtyard. This would promote visibility for shared open space areas.</i></p> <ul style="list-style-type: none"> <li>• <b>OPTION 1:</b> For cottages within 20 feet of a street property line, a minimum of 15 percent of the area of all street-facing facades 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.</li> <li>• <b>OPTION 2:</b> Cottages within 20 feet of a street property line must meet any window coverage requirement applicable to detached single family dwellings in the same zone.</li> <li>• <b>OPTION 3 (to be combined with Options 1 or 2):</b> Require the same window coverage standard for facades facing the common courtyard as applies to street-facing facades.</li> </ul>	<p>See draft OARs.</p>
<p>6. <u>Parking Design.</u></p>	<p><i><b>Commentary:</b> These recommended provisions are intended to limit the visual impact of parking areas as viewed from the street and from the common courtyard, while also providing flexibility in the design and arrangement of parking. Parking could be provided in shared clusters or with individual units. ECONW has noted that individual garages may be important for the cottages’ marketability, therefore that option remains. However, by including garages in the footprint and floor area calculations, shared parking is encouraged.</i></p> <ol style="list-style-type: none"> <li>a. <u>Clustered parking.</u> Off-street parking may be arranged in clusters of not more than five (5) contiguous spaces separated by at least four (4) feet of landscaping. Clustered parking areas may be covered.</li> <li>b. <u>Parking location and access.</u> <ol style="list-style-type: none"> <li>i. Off-street parking spaces must be accessed only by a private driveway or public alley. No parking space may access a public street directly.</li> <li>ii. Off-street parking spaces and vehicle maneuvering areas must be located a minimum of 20 feet from any street property line, except alley property lines, where parking and vehicle maneuvering areas may be provided within 5 feet of the property line.</li> <li>iii. Off-street parking spaces and vehicle maneuvering areas may not be located between a street property line, except alley property lines, and cottages abutting the street property line.</li> <li>iv. Off-street parking spaces may not be located within 10 feet of any other property line. Driveways and drive aisles are permitted within 10 feet of other property lines.</li> </ol> </li> <li>c. <u>Screening.</u> Landscaping or architectural screening at least three feet tall shall separate clustered parking areas and parking structures from common courtyards and public streets.</li> </ol>	<p>See draft OARs.</p>

Standard	Model Code	Minimum Compliance
	<p>d. <u>Individual Garages</u>. Garages or carports for individual cottages (both attached and detached) are included as part of the floor area and footprint calculations for each cottage. Such garages or carports must not abut common courtyards, must not gain access off a public street, and must have garage doors of twelve (12) feet or less in width.</p> <p>e. <u>Shared Garages</u>. A garage or carport intended to be shared by multiple cottage units must not exceed [1,200 sf] in size. <i>(Note: It may be preferable not to limit the size of shared garages, in order to encourage shared parking. However, we've included this option for discussion.)</i></p>	
<p>7. <u>Existing Structures</u>.</p>	<p><i><b>Commentary:</b> This recommended provision encourages infill development of cottage clusters on lots with a pre-existing single family home. The existing home would count as part of the cluster, and would not be subject to the other model code standards, but also could not increase nonconformance with the standards.</i></p> <p>On a lot or parcel to be used for a cottage cluster project, a pre-existing detached single family dwelling may remain within the cottage cluster project area under the following conditions:</p> <ul style="list-style-type: none"> <li>a. The existing dwelling may be nonconforming with respect to the requirements of this code.</li> <li>b. Existing dwellings may be expanded up to the maximum height, footprint, and/or unit size required by this code; however, existing dwellings that exceed the maximum height, footprint, and/or unit size of this code may not be expanded.</li> <li>c. The existing dwelling shall count towards the number of cottages allowed in the cottage cluster project.</li> <li>d. The floor area of the existing dwelling shall not count towards any cottage cluster average or cottage cluster project average or total unit size limits.</li> </ul>	<p><i>Identical to Model Code language.</i></p>



## Division 46

### Middle Housing

#### 660-046-0000 Purpose

The purpose of this division is to prescribe standards guiding the development of Middle Housing types as provided in Oregon Laws 2019, chapter 639. OAR 660-046-0010 to OAR 660-046-~~0130~~0240 establish standards related to the siting and design of Middle Housing types in urban growth boundaries.

#### 660-046-0010 Applicability

1. A local government that is a Medium or Large City must comply with this division.
2. Notwithstanding section (1), a local government need not comply with this division for:
  - a. Lands that are not zoned for residential use, including but not limited to lands zoned primarily for commercial, industrial, agricultural, or public uses;
  - b. Residentially zoned lands that do not allow for the development of a detached single-family home; or
  - c. Lands that are not incorporated and that are zoned under an interim zoning designation that maintains the land's potential for planned urban development.
3. 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. Where local governments have adopted, or shall adopt, regulations implementing the following statewide planning goals, the following provisions provide direction as to how those regulations shall be implemented in relation to Middle Housing, as required by OAR 660-046-0010.
  - a. Goal 5: Natural Resources, Scenic, and Historic Areas - Pursuant to OAR chapter 660, division 23, local governments must adopt land use regulations to protect identified resources under Goal 5, including regulations to comply with protective measures (including plans, policies, and regulations) applicable to Middle Housing.
    - A. Goal 5 Riparian Areas, Wetlands, and Wildlife Habitat – Pursuant to OAR 660-023-0050 through 660-023-0115, local governments must adopt land use regulations to protect water quality, aquatic habitat, and the habitat of threatened, endangered and sensitive species. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 5. Local governments may apply regulations to ~~Duplexes-Middle Housing~~ that apply to detached single-family dwellings in the same zone.
    - B. Goal 5: Historic Resources – Pursuant to OAR 660-023-0200(7), local governments must adopt land use regulations to protect locally significant historic resources . This includes regulations of Middle Housing to comply with protective measures as it relates to the integrity of a historic resource or district. Protective measures shall be adopted and applied as provided in OAR 660-023-0200. Local governments may not apply the following types of regulations specific to Middle Housing:
      - i. Use, density, and occupancy restrictions that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings.
      - ii. Standards that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings
  - b. Goal 6: Air, Water and Land Resources Quality – Pursuant to OAR 660-015-000(6), all waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. Local governments may apply regulations to Middle

[Housing in a manner that complies with federal and state air, water and land quality requirements.](#)

- c. Goal 7: Areas Subject to Natural Hazards – Pursuant to OAR 660-015-0000(7), local governments must adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards. Such protective measures adopted pursuant to Goal 7 apply to Middle Housing, including but not limited to restrictions on use, density, and occupancy in the following areas:
  - A. Special Flood Hazard Areas as identified on the applicable FEMA Flood Insurance Rate Map (FIRM); or
  - B. Other hazard areas identified in an adopted comprehensive plan or development code; provided the development of Middle Housing presents a greater risk to life or property than the development of detached single-family dwellings. Greater risk includes but is not limited to actions or effects such as:
    - i. Increasing the number of people exposed to a hazard;
    - ii. Increasing risk of damage to property, built, or natural infrastructure;
    - iii. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.
- d. Goal 15: Willamette Greenway – Pursuant to OAR 660-015-0005, cities and counties must review intensifications, changes of use or developments to insure their compatibility with the Willamette River Greenway. Local governments may regulate Middle Housing to comply with Goal 15 protective measures that apply to detached single-family dwellings in the same zone.
- e. Goal 16: Estuarine Resources – Pursuant to OAR 660-015-0010(1) and OAR chapter 660, division 17, local governments must apply land use regulations that protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality. Local governments may prohibit Duplexes and Middle Housing types other than Duplexes in areas regulated to protect estuarine resources under Goal 16.
- f. Goal 17: Coastal Shorelands – Pursuant to OAR 660-015-0010(2) and OAR 660-037-0080, local governments must apply land use regulations that protect shorelands for water-dependent recreational, commercial, and industrial uses. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 17. Local governments may apply regulations to ~~Duplexes-Middle Housing~~ that apply to detached single-family dwellings in the same zone.
- g. Goal 18: Beaches and Dunes – Pursuant to OAR 660-015-0010(3), local governments must apply land use regulations to residential developments to mitigate hazards to life, public and private property, and the natural environment in areas identified as Beaches and Dunes. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 18 including but not limited to restrictions on use, density, and occupancy; provided the development of Middle Housing presents a greater risk to life or property than development of detached single-family dwellings. Greater risk includes but is not limited to actions or effects such as:
  - A. Increasing the number of people exposed to a hazard;
  - B. Increasing risk of damage to property, built or natural infrastructure; and
  - C. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.

4. For the purposes of assisting local jurisdictions in adopting reasonable siting and design standards for Middle Housing, the Commission adopts the following model Middle Housing codes. The Model Code adopted by reference in this section will be applied to Medium and Large Cities who have not acted to comply with the provisions of ORS 197.758 and this division and completely replaces and pre-empts any provisions of that local jurisdictions development code that conflict with the Model Code:

a. Medium City Model Code: <hyperlink to Model Code>

b. Large City Model Code: <hyperlink to Model Code>

4.5. This division does not prohibit local governments from allowing:

- a. Single-family dwellings in areas zoned to allow for single-family dwellings; or
- b. Middle Housing in areas not required under this division.

## 660-046-0020 Definitions

As used in this division, the definitions in ORS 197.015 and 197.758 et seq apply, unless the context requires otherwise. In addition:

1. "A local government that has not acted" means a local government that has not adopted acknowledged land use regulations that are in compliance with ORS 197.758 and this division.
- 1-2. "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. Units may be located on a single lot or parcel, or on individual lots or parcels that include a common courtyard.
- 2-3. "Department" means the Department of Land Conservation and Development.
- 3-4. "Detached single-family dwelling" means a detached structure on a Lot or Parcel that is comprised of a single dwelling unit, either site built or a manufactured dwelling.
5. "Duplex" means two attached dwelling units on one Lot or Parcel. A Medium City local government may define a Duplex to include two detached dwelling units on one Lot or Parcel.
6. "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:
  - a. Areas where the elevation of the floor is 4 feet or more below the adjacent right-of way;
  - b. Roof area, including roof top parking;
  - c. Roof top mechanical equipment; and
  - d. 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
7. "Floor Area Ratio" 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.
8. "Goal Protected Lands" means means lands protected or designated pursuant to the following statewide planning goals:
  - a. Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces;
  - b. Goal 6 Air, Water and Land Resource Quality;
  - c. Goal 7 Areas Subject to Natural Hazards;
  - d. Goal 15 Willamette River Greenway;
  - e. Goal 16 Estuarine Resources;
  - f. Goal 17 Coastal Shorelands;
  - g. Goal 18 Beaches and Dunes.

For the purposes of determining areas in which triplexes, quadplexes, townhomes, and cottage clusters must be allowed, local governments may exclude "Goal Protected Lands".
- 4-9. "Infrastructure Constrained Lands" means areas where it is not feasible to provide acceptable water, sewer, storm drainage, or transportation services to serve new triplexes, quadplexes, townhomes, or cottage cluster development as defined by OAR 660-046-0320(1) and the thresholds identified in OAR 660-046-0340; where the local government is not able to correct the infrastructure limitation by utilizing the process outlined in OAR 660-046-0300 through 660-046-0370 due to cost, jurisdictional, or other limitations; and which cannot be remedied by future development of middle housing on the subject lot or parcel.
- 5-10. "Large City" means each city with a certified Portland State University Population Research Center estimated population more than 25,000 or city with a population over 1,000 within a metropolitan service district. This also includes unincorporated areas of counties within a metropolitan service district with sufficient urban services as defined in ORS 195.065.
11. "Lot or Parcel" means any legally created unit of land.
12. "Master Planned Community" means an area within a Large Ceity that meets both of the following criteria:
  - a. A site:
    - A. Added to the Large Ceity's urban growth boundary after January 1, 2021; or

- B. Within a Large City's existing urban growth boundary greater than 20 acres in size;
- b. A site for which a Large City has adopted a master plan, concept plan, or similar document that:
  - A. If initially adopted after January 1, 2021, authorizes a net residential density of at least 15 dwelling units per acre and does not require greater than 50 percent of all residential units be single detached units or duplexes; or
  - B. If initially adopted before January 1, 2021, authorizes a net residential density of at least eight dwelling units per acre and allows all units, at minimum, to be single detached units or duplexes.

~~6-13.~~ "Medium City" means each city with a certified Portland State University Population Research Center estimated population more than 10,000 and less than 25,000 and not within a metropolitan service district.

14. "Middle Housing" means duplexes, triplexes, quadplexes, cottage clusters, and townhouses, a Duplex as defined ~~in this section (4)~~ division.

15. "Model Code" means the model code developed by the Department contained in OAR 660-046-~~04010(54)~~.

16. "Quadplex" means four dwelling units on a lot. A local government must allow quadplexes to be provided in an attached configuration but may allow detached units as well.

17. "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."

18. "Triplex" means three dwelling units on a lot. A local government must allow triplexes to be provided in an attached configuration but may allow detached units as well.

~~7-19.~~ "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.

#### 660-046-0030 Implementation of Middle Housing Ordinances

1. Before a local government amends an acknowledged comprehensive plan or a land use regulation to allow Middle Housing, the local government must submit the proposed change to the Department for review and comment pursuant to OAR chapter 660, division 18.
2. In adopting or amending regulations or amending a comprehensive plan to allow Middle Housing, a local government must include findings demonstrating consideration, as part of the post-acknowledgement plan amendment process, of methods to increase the affordability of Middle Housing through ordinances or policies that include but are not limited to:
  - a. Waiving or deferring system development charges;
  - b. Adopting or amending criteria for property tax exemptions under ORS 307.515 to ORS 307.523, ORS 307.540 to ORS 307.548 or ORS 307.651 to ORS 307.687 or property tax freezes under ORS 308.450 to ORS 308.481; and
  - c. Assessing a construction tax under ORS 320.192 and ORS 320.195.
3. When a local government amends its comprehensive plan or land use regulations to allow Middle Housing, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

#### 660-046-0040 Compliance

1. A local government may adopt land use regulations or amend its comprehensive plan to comply with ORS 197.758 et seq and the provisions of this division.
2. A local government may request from the Department an extension of the time allowed to complete the action in section (1) with an Infrastructure-Based Time Extension Request pursuant to OAR 660-046-0300 to 0370.

3. A Medium City which is A Local Government That Has Not Acted by June 30, 2021 or within one year of qualifying as a Medium City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-~~01300010~~(54) in its entirety to all proposed Middle Housing development applications until such time as the Medium City has adopted provisions under section (1).
4. A Large City which is A Local Government That Has Not Acted by June 30, 2022 or within two years of qualifying as a Large City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0010(4) for the specific Middle Housing type that is not in compliance with the relevant rules in this division to all proposed development applications for that specific Middle Housing type until such time as the local government has adopted provisions under section (1).
3. —
- 4-5. If a ~~Medium City~~ local government has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the city's land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an appellate court solely on procedural grounds, the ~~Medium City~~ local government is deemed to have acted. Accordingly, the local government ~~Medium City~~ may continue to apply its own land use regulations and comprehensive plan as they existed prior to the adoption of land use regulations or comprehensive plan amendments that were the subject of procedural remand until the first of the two options:
  - a. The local government ~~Medium City~~ has adopted land use regulations or amended its comprehensive plan in response to the remand; or
  - b. 120 days after the date of the remand. If the local government ~~Medium City~~ has not adopted land use regulations or amended its comprehensive plan within 120 days of the date of the remand, the local government ~~Medium City~~ is deemed not to have acted under sections (3) and (4).
- 5-6. If a local government ~~Medium City~~ has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the local government's ~~Medium City's~~ land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an appellate court on any substantive grounds, the city is deemed to have not acted under sections (3) and (4).
- 6-7. If a local government ~~Medium City~~ acknowledged to be in compliance with this division subsequently amends its land use regulations or comprehensive plan, and those amendments are remanded by the Land Use Board of Appeals or an appellate court, the city shall continue to apply its land use regulations and comprehensive plan as they existed prior to the amendments until the amendments are acknowledged.
- 7-8. In the event that ~~Where~~ a local government ~~Medium City~~ directly applies the Model Code in accordance with sections (3), (4) and (5), the Model Code completely replaces and pre-empts any provisions of that local government's ~~Medium City's~~ development code that conflict with the Model Code.

#### 660-046-0050 Eligible Local Governments

1. If a local government was not previously a Medium City and a certified Portland State University Population Research Center population estimate qualifies a city as a Medium City, the city must comply with this division within one year of its qualification as a Medium City.
- 1-2. If a local government was not previously a Large City and a certified Portland State University Population Research Center population estimate qualifies a city as a Large City, the ~~city~~ local government must comply with this division within two years of its qualification as a Large City.

#### 660-046-0100 Purpose of Middle Housing in Medium Cities

OAR 660-046-0105 through OAR 660-046-0130 are intended to measure compliance with ORS 197.758 et seq and Goal 10 Housing for Medium Cities.

### 660-046-0105 Applicability of Middle Housing in Medium Cities

1. A Medium City must allow for the development of a Duplex, including those Duplexes created through conversion of an existing detached single-family dwelling, on each Lot or Parcel zoned for residential use that allows for the development of detached single-family dwellings.
2. OAR 660-046-0105 through OAR 660-046-0130 do not require a Medium City to allow more than two dwellings units on a Lot or Parcel, including any accessory dwelling units.

### 660-046-0110 Provisions Applicable to Duplexes in Medium Cities

1. Medium Cities may regulate Duplexes to comply with protective measures, including plans, policies and regulations, as provided in OAR 660-046-0010(3).
2. Medium Cities may regulate siting and design of Duplexes, provided that the regulations;
  - a. Are clear and objective standards, conditions, or procedures [consistent with ORS 197.307\(4\)](#); and
  - b. Do not, individually or cumulatively, discourage the development of Duplexes through unreasonable costs or delay.
3. Siting and design standards that create unreasonable cost and delay include any standards applied to Duplex development that are more restrictive than those applicable to detached single-family dwellings in the same zone.
4. Siting and design standards that do not, individually or cumulatively, discourage the development of Duplexes through unreasonable cost and delay include only the following:
  - a. Regulations to comply with protective measures adopted pursuant to statewide land use planning goals provided in OAR 660-046-0010(3);
  - b. Permitted uses and approval process provided in OAR 660-046-0115;
  - c. Siting standards provided in OAR 660-046-0120;
  - d. Design standards in Medium Cities provided in OAR 660-046-0125;
  - e. Duplex Conversions provided in OAR 660-046-0130; and
  - f. Any siting and design standards contained in the Model Code referenced in section [OAR 660-046-0010\(4\)\(5\)](#).

~~5.—For the purposes of assisting Medium Cities in adopting reasonable siting and design standards for Duplexes, the Commission adopts the following model Middle Housing code for Medium Cities. The Model Code adopted by reference in this section will be applied to Medium Cities who have not acted to comply with the provisions of ORS 197.758 and this division and completely replaces and pre-empts any provisions of that Medium City’s development code that conflict with the Model Code: <hyperlink to Model Code>~~

### 660-046-0115 Permitted Uses and Approval Process

Medium Cities must apply the same approval process to Duplexes as detached single-family dwellings in the same zone. Pursuant to OAR [660-007-0015](#), [OAR 660-008-0015](#), and ORS 197.307, Medium Cities may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of Duplexes. Nothing in this rule prohibits a Medium City from adopting ~~and applying~~ an alternative approval process for applications and permits for Middle Housing based on approval criteria that are not clear and objective as provided in OAR [660-007-0015\(2\)](#), [OAR 660-008-0015\(2\)](#), and ORS 197.307(6).

### 660-046-0120 Duplex Siting Standards in Medium Cities

The following standards apply to all Duplexes:

1. Minimum Lot or Parcel Size: A Medium City may not require a minimum Lot or Parcel size that is greater than the minimum Lot or Parcel size required for a detached single-family dwelling in the same zone. Additionally, Medium Cities shall allow the development of a Duplex on any property zoned to allow detached single-family dwellings, which was legally created prior to the Medium City’s current lot size minimum for detached single-family dwellings in the same zone.
2. Density: If a Medium City applies density maximums in a zone, it may not apply those maximums to the development of Duplexes.

3. Setbacks: A Medium City may not require setbacks to be greater than those applicable to detached single-family dwellings in the same zone.
4. Height: A Medium City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone.
5. Parking:
  - a. A Medium City may not require more than a total of two off-street parking spaces for a Duplex.
  - b. Nothing in this section precludes a Medium City from allowing on-street parking credits to satisfy off-street parking requirements.
6. Lot Coverage and Floor Area Ratio: Medium Cities are not required to apply lot coverage or floor area ratio standards to new Duplexes. However, if the Medium City chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for a Duplex that is less than established for detached single-family dwelling in the same zone.
7. A Medium City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must grant the same exceptions to Duplexes.

#### [660-046-0125 Duplex Design Standards in Medium Cities](#)

1. Medium Cities are not required to apply design standards to new Duplexes. However, if the Medium City chooses to apply design standards to new Duplexes, it may only apply the same clear and objective design standards that the Medium City applies to detached single-family structures in the same zone.
2. A Medium City may not apply design standards to Duplexes created as provided in OAR 660-046-0130.

#### [660-046-0130 Duplex Conversions](#)

Conversion of an existing detached single-family dwelling to a Duplex is allowed, pursuant to OAR 660-046-0105(2), provided that the conversion does not increase nonconformance with applicable clear and objective standards in the Medium City's development code.

#### [660-046-0200 Purpose of Middle Housing in Large Cities](#)

[OAR 660-046-0205 through OAR 660-046-0230 are intended to measure compliance with ORS 197.758 et seq and Goal 10 Housing for Large Cities.](#)

#### [660-046-0205 Applicability of Middle Housing in Large Cities](#)

1. [A Large City must allow for the development duplexes on each lot or parcel as provided in OAR 660-046-0100 through 660-046-0130.](#)
2. [A Large City must allow for the development of Triplex, Quadplex, Townhouse and Cottage Clusters, including those created through conversion of existing detached single-family dwellings, in areas zoned for residential use that allow for the development of detached single-family dwellings. A Large City may limit or preclude development of middle housing \(other than duplexes\) on the following types of lands :](#)
  - a. [Goal-Protected lands;](#)
  - b. [Infrastructure-Constrained lands;](#)
  - c. [An existing city block with a majority of slopes greater than 25 percent, or, for vacant lands, contiguous lands of at least one acre with slopes greater than 25 percent. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum 10-foot contour intervals. For the purposes of this subsection, "existing city block" means one or more lots or parcels that is entirely surrounded by existing improved public or private streets;](#)
  - d. [Master Planned Communities. For master planned communities adopted by a Large City before January 1, 2021, a local government may only ap\(than duplexes\) due to a constraint not related to siting and design standards. A Large City must demonstrate that preclusions of middle housing \(other than duplexes\) on other types of lands are the result of implementing or complying with an established state or federal policy or regulation.](#)

3. Pursuant to OAR 660-046-0205 through OAR 660-046-0230, a Large City may apply the following numerical standards to middle housing types:
  - a. Duplex – Local governments may allow more than two dwellings units on a Lot or Parcel, including any accessory dwelling units.
  - b. Triplex/Quadplex – A local government may allow more than four units on a lot, if they so choose.
  - c. Townhouse – Local governments must require at least two attached townhouse units and must allow up to four attached townhouse units. A local government may allow five or more attached townhouse units.
  - d. Cottage Cluster – Local governments must allow at least five units in a cottage cluster. A local government must allow up to eight units clustered around a common courtyard. Nothing in this section precludes a local government from allowing less than five or greater than eight units clustered around a common courtyard.

#### 660-046-0210 Provisions Applicable to Middle Housing in Large Cities

1. Large Cities may regulate Middle Housing to comply with protective measures, including plans, policies and regulations, as provided in OAR 660-046-0010(3).
2. Large Cities may regulate siting and design of Middle Housing, provided that the regulations;
  - a. Are clear and objective standards, conditions, or procedures consistent with the requirements of ORS 197.307(4); and
  - b. Do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable costs or delay.

\Siting and design standards that do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable cost and delay include only the following:

- a. Regulations to comply with protective measures adopted pursuant to statewide land use planning goals provided in OAR 660-046-0010(3);
- b. Permitted uses and approval process provided in OAR 660-046-0215;
- c. Siting standards provided in OAR 660-046-0220;
- d. Design standards in Large Cities provided in OAR 660-046-0225;
- e. Middle Housing Conversions provided in OAR 660-046-0230; and
- f. Any siting and design standards contained in the Model Code referenced in section OAR 660-046-0010(4).

#### 660-046-0215 Permitted Uses and Approval Process

Large Cities must apply the same approval process to Middle Housing as detached single-family dwellings in the same zone. Pursuant to OAR 660-008-0015 and ORS 197.307, Large Cities may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of Middle Housing consistent with the requirements of ORS 197.307(4). Nothing in this rule prohibits a Large City from adopting an alternative approval process for applications and permits for Middle Housing based on approval criteria that are not clear and objective as provided in OAR 660-007-0015(2), OAR 660-008-0015(2), and ORS 197.307(6).

#### 660-046-0220 Middle Housing Siting Standards in Large Cities

1. Large Cities must apply standards to duplexes as provided in OAR 660-046-0120.
2. The following standards apply to Triplexes and Quadplexes:
  - a. Minimum Lot or Parcel Size:
    - A. For Triplexes:
      - i. If the minimum lot or parcel size for a detached single-family dwelling is less than 5,000 square feet, a Large City may limit triplexes to lots or parcels 5,000 square feet or greater.
      - ii. If the minimum lot or parcel size for a detached single-family dwelling is 5,000 square feet or greater, a Large City may apply the same minimum lot or parcel size or a lesser lot or parcel size to triplexes.



- B. For Quadplexes:
    - i. If the minimum lot or parcel size for a detached single-family dwelling is less than 7,000 square feet, a Large City may limit quadplexes to lots or parcels 7,000 square feet or greater.
    - ii. if the minimum lot size for a detached single-family dwelling is 7,000 square feet or greater, a Large City may apply the same minimum lot or parcel size or a lesser lot or parcel size to quadplexes.
  - b. Minimum Lot Width: A Large City is not required to apply minimum lot width standards. However, if a Large City applies a minimum lot width standard to Triplex or Quadplex development it may not be wider than the standard for a single-family detached dwelling in the same zone.
  - c. Density: If a Large City applies density maximums in a zone, it may not apply those maximums to the development of Quadplex and Triplexes.
  - d. Setbacks: A Large City may not require setbacks to be greater than those applicable to detached single-family dwellings in the same zone.
  - e. Height: A Large City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone, except a maximum height may not be less than 25 feet or two stories.
  - f. Parking:
    - A. For Triplexes, a local government may require up to the following off-street parking spaces:
      - i. For lots of 3,000 square feet or less: one space in total;
      - ii. For lots greater than 3,000 square feet and less than or equal to 5,000 square feet: two spaces in total;
      - iii. For lots greater than 5,000 square feet: three spaces in total.
    - B. For Quadplexes, a local government may require up to the following off-street parking spaces:
      - i. For lots of 3,000 square feet or less: one space in total;
      - ii. For lots greater than 3,000 square feet and less than or equal to 5,000 square feet: two spaces in total;
      - iii. For lots greater than 5,000 square feet and less than or equal to 7,000 square feet: three spaces in total;
      - iv. For lots greater than 7,000 square feet: four spaces in total.
    - C. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
    - D. A Large City may allow but may not require off-street parking to be provided as a garage or carport.
    - E. A Large City must apply the same off-street parking surfacing, dimensional, landscaping, access, and circulation standards that apply to single-family detached dwellings in the same zone.
  - g. Lot Coverage and Floor Area Ratio: Large Cities are not required to apply lot coverage or floor area ratio standards to new Middle Housing. However, if the Large City chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for Middle Housing that is less than established for detached single-family dwelling in the same zone.
3. The following standards apply to Townhouses:
- a. Minimum Lot or Parcel Size: A local jurisdiction is not required to apply a minimum lot size to townhouses, but if they choose to, the average minimum lot size may not be greater than 1,500 square feet. A local jurisdiction may apply separate minimum lot sizes for internal, external, and corner townhouse lots.
  - b. Minimum Street Frontage: A Large City may allow frontage on private streets. Any minimum street frontage standard must not exceed 25% of the single-family detached frontage, or 20 feet,

whichever is greater. If a Large City allows flag lots, it is not required to allow townhomes on those lots.

- c. Density: If a Large City applies density maximums in a zone, it must allow four times the maximum density allowed for detached single family dwellings in the same zone for the development of Townhouses or 25 units per acre, whichever is less
  - d. Setbacks: A Large City 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.
  - e. Height: A Large City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone. If local governments mandate off-street parking, their height standards must allow construction of at least three stories. If local governments do not mandate off-street parking, their height standards must allow construction of at least two stories.
  - f. Parking:
    - A. A Large City may not require more than one off-street parking space per townhouse unit.
    - B. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
  - g. Bulk and Scale: A Large City is not required to apply standards to control bulk and scale to new Townhouses. However, if a Large City chooses to regulate scale and bulk, including but not limited to provisions including lot coverage, floor area ratio, and maximum unit size, those standards cannot cumulatively or individually limit the bulk and scale of a townhouse project greater than that of a single family detached dwelling.
  - h. Minimum Open Space and Landscaping: A Large City is not required to regulate minimum open space area and dimensions, but if it chooses to, the minimum open space may not exceed 15% of the minimum lot size, and the minimum smallest dimension may not exceed the lot width or 20 ft, whichever is less. A Large City may establish provisions allowing the provision of open space through shared common areas.
4. The following standards apply to all Cottage Clusters:
- a. Minimum Lot or Parcel Size: A Large City is not required to apply minimum lot or parcel size standards to new Cottage Cluster developments. However, if a Large City chooses to regulate minimum lot size, those standards cannot be more restrictive than that of a single family detached dwelling in the same zone.
  - b. Minimum Lot Width: A Large City is not required to apply minimum lot width standards. However, if a Large City applies a minimum lot width standard to cottage cluster development it may not be wider than the standard for a single-family detached dwelling in the same zone.
  - c. Density: For the purposes of calculating density, if a Large City applies density maximums in a zone, it may not apply those maximums to the development of Cottage Clusters. A cottage cluster development must meet a minimum density of at least four units per acre.
  - d. Setbacks: A Large City may not require perimeter setbacks to be greater than those applicable to detached single family structures in the same zone.
  - e. Height: Cottage Clusters must be allowed a height of at least one story.
  - f. Unit Size: A Large City may limit the size of dwellings in a Cottage Cluster, but must apply a maximum building footprint of 900 square feet per unit.
  - g. Parking:
    - A. A Large City may not require more than one off-street parking space per dwelling in a Cottage Cluster.
    - B. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
  - h. Lot Coverage and Floor Area Ratio: A Large City is not required to apply lot coverage or floor area ratio standards to new Cottage Clusters. However, if a Large City chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for a Cottage Cluster that is less than established for detached single-family dwelling in the same zone.

- i. A Large City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must grant the same exceptions to Cottage Clusters.
- j. Nothing in this division precludes a Large City from allowing cottage cluster units on individual lots within the cottage cluster development.

#### 660-046-0225 Middle Housing Design Standards in Large Cities

1. A Large City is not required to apply design standards to new Middle Housing. However, if a Large City chooses to apply design standards to new Middle Housing that are more restrictive than those provided in the model code, it must submit findings and analysis demonstrating that the proposed standards will not cause unreasonable cost or delay as provided in OAR 660-046-0240 (2)(eb).
2. A Large City may not apply design standards to Middle Housing created as provided in OAR 660-046-0230.

#### 660-046-0230 Middle Housing Conversions

1. Conversion of an existing detached single-family dwelling to Middle Housing is allowed, pursuant to OAR 660-046-0205(2), provided that the conversion does not increase nonconformance with applicable clear and objective standards, unless increasing nonconformance is otherwise permitted by the Large City's development code.
2. If Middle Housing is being created through the conversion of an existing single family detached dwelling, a Large City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must allow granting the same exceptions to Middle Housing.
3. On a lot or parcel to be used for a cottage cluster project, a pre-existing detached single family dwelling may remain within the cottage cluster project area under the following conditions:
  - a. The existing dwelling may be nonconforming with respect to the requirements of this code;
  - b. Existing dwellings may be expanded up to the maximum height, footprint, and/or unit size required by this code; however, existing dwellings that exceed the maximum height, footprint, and/or unit size of this code may not be expanded;
  - c. The existing dwelling shall count towards the number of cottages allowed in the cottage cluster project;
  - d. The floor area of the existing dwelling shall not count towards any cottage cluster average or cottage cluster project average or total unit size limits.

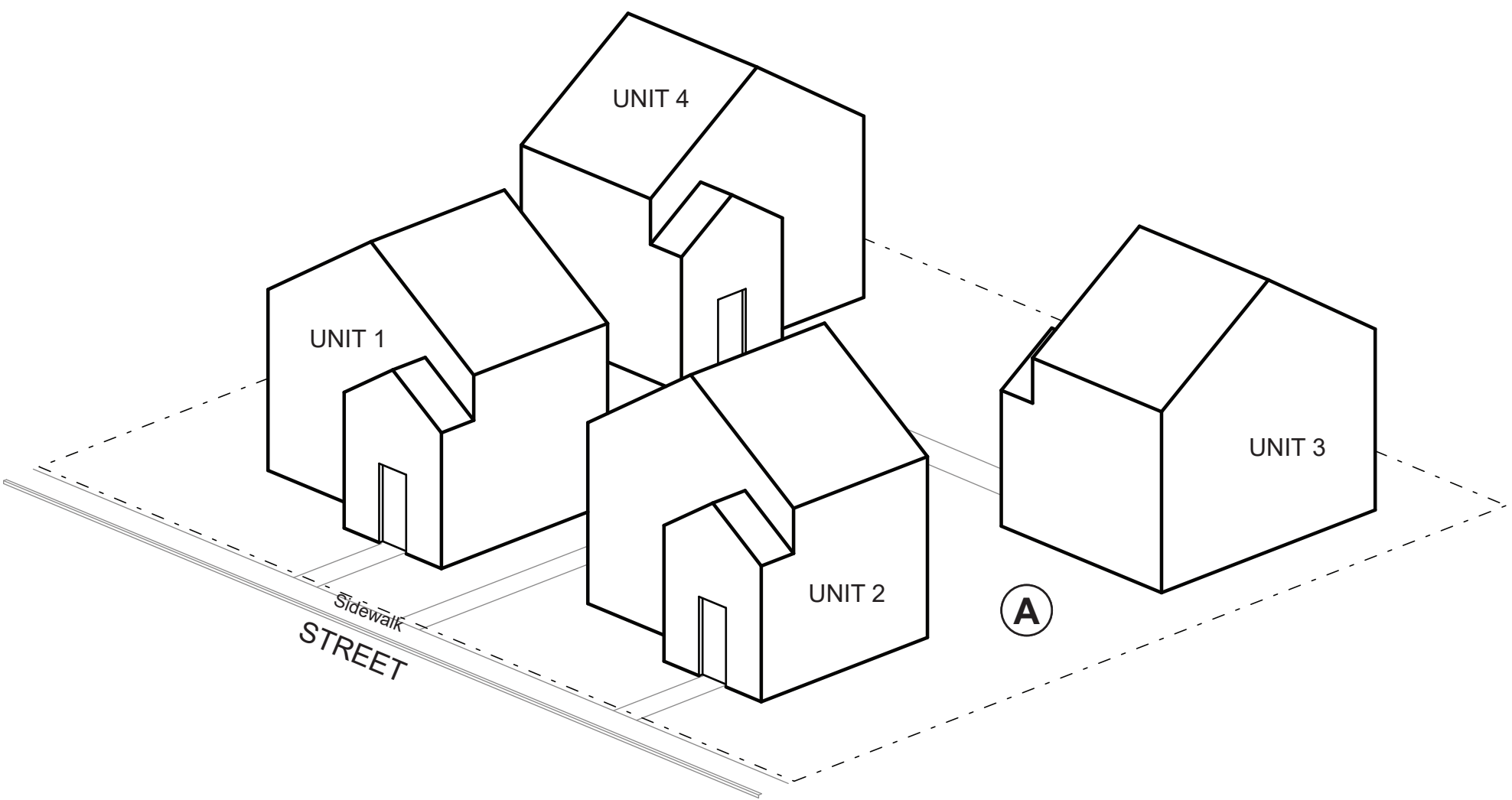
#### 660-046-0240 Alternative Standards

A Large City may adopt alternative development standards which exclude middle housing from areas not authorized pursuant to OAR 660-046-0205, or which apply siting standards not authorized by OAR 660-046-0220. A Large City must satisfy the following criteria when adopting alternative development or siting standards:

1. Existing Alternative Standards – If a Large City can demonstrate that existing siting or design standard or standards for middle housing types not in compliance with the standards in this division have resulted in the substantial production of middle housing in areas where the standard is applied, the city may continue the application of that standard or standards.
2. New Alternative Standards:
  - a. The alternative development or siting standard is a response to an issue or problem that cannot be resolved by the adoption of design standards related to bulk, size, or shape, such as height, setbacks, floor area ratio, lot coverage, or similar types of design standards.
  - b. The alternative development or siting standard does not result in unreasonable cost or delay. A Large City must submit findings and analysis demonstrating that the proposed standards will not cause unreasonable cost or delay to the development of middle housing. The analysis must consider how a standard or standards, either individually or cumulatively, affect the following factors in comparison to what is provided in this division:
    - A. The total time and cost of construction, including design, labor, materials, and maintenance;

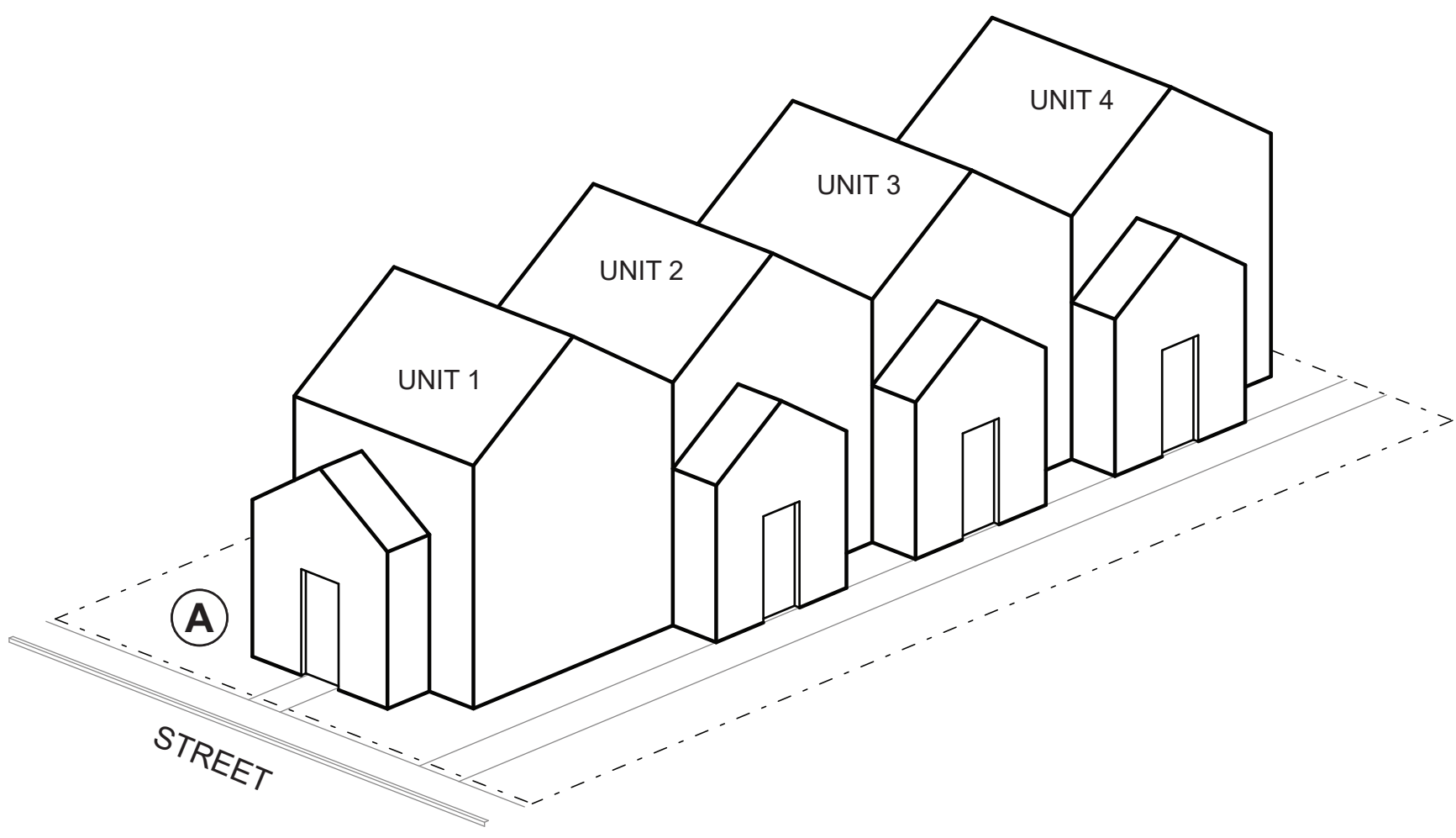
- B. The total cost of land;
          - C. The availability and acquisition of land, including areas with existing development;
          - D. The total time and cost of permitting and fees required to make land suitable for development;
          - E. The cumulative livable floor area that can be produced; and
          - F. The proportionality of cumulative time and cost imposed by the proposed standard(s) in relationship to the purpose the standard(s) fulfill.
        - c. The alternative development or siting standard does not result in inequitable distribution of middle housing within existing neighborhoods or areas of the Large City. A Large City must submit findings and analysis demonstrating that the alternative standard or standards, either individually or cumulatively, will not result in an inequitable distribution of middle housing with regard to the following factors in comparison to what is provided in this division. At a minimum, findings and analysis must demonstrate that the proposed alternative standards will not perpetuate or exacerbate disparities, including the following factors at the Census block group level or a similar geography:
          - A. Household income, including concentrated areas of poverty and wealth
          - B. Housing cost for rental and owner-occupied households
          - C. Housing value and purchase price
          - D. Race and Ethnicity
3. A Large City may not justify alternative development standards or siting standards based upon community character, neighborhood compatibility, or similar subjective criteria.

# Definition: Quadplex - 1



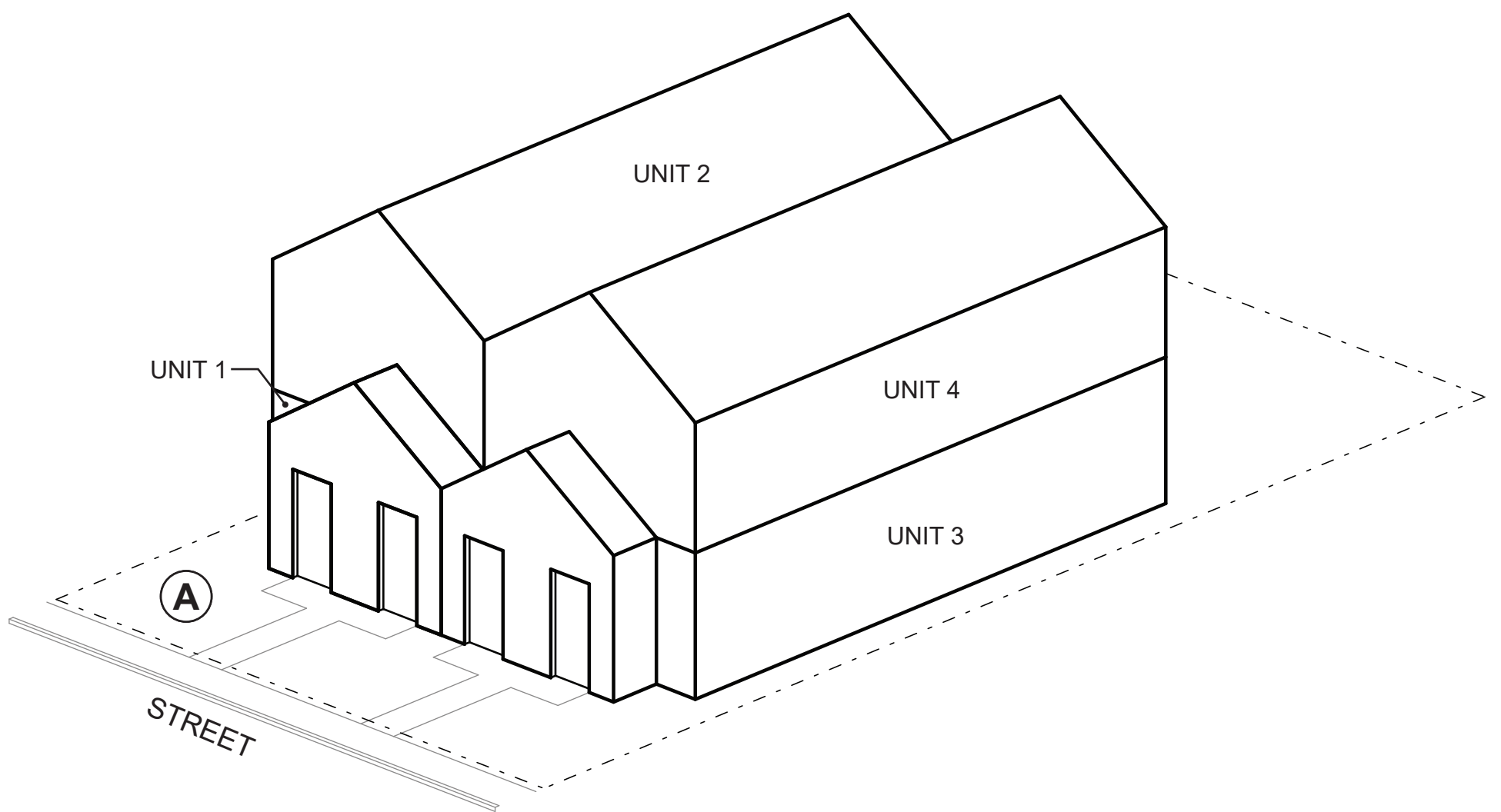
**A** Four detached dwelling units on a lot

# Definition: Quadplex - 2



**A** Four attached dwelling units on a lot

# Definition: Quadplex - 3



**A** Four attached dwelling units on a lot

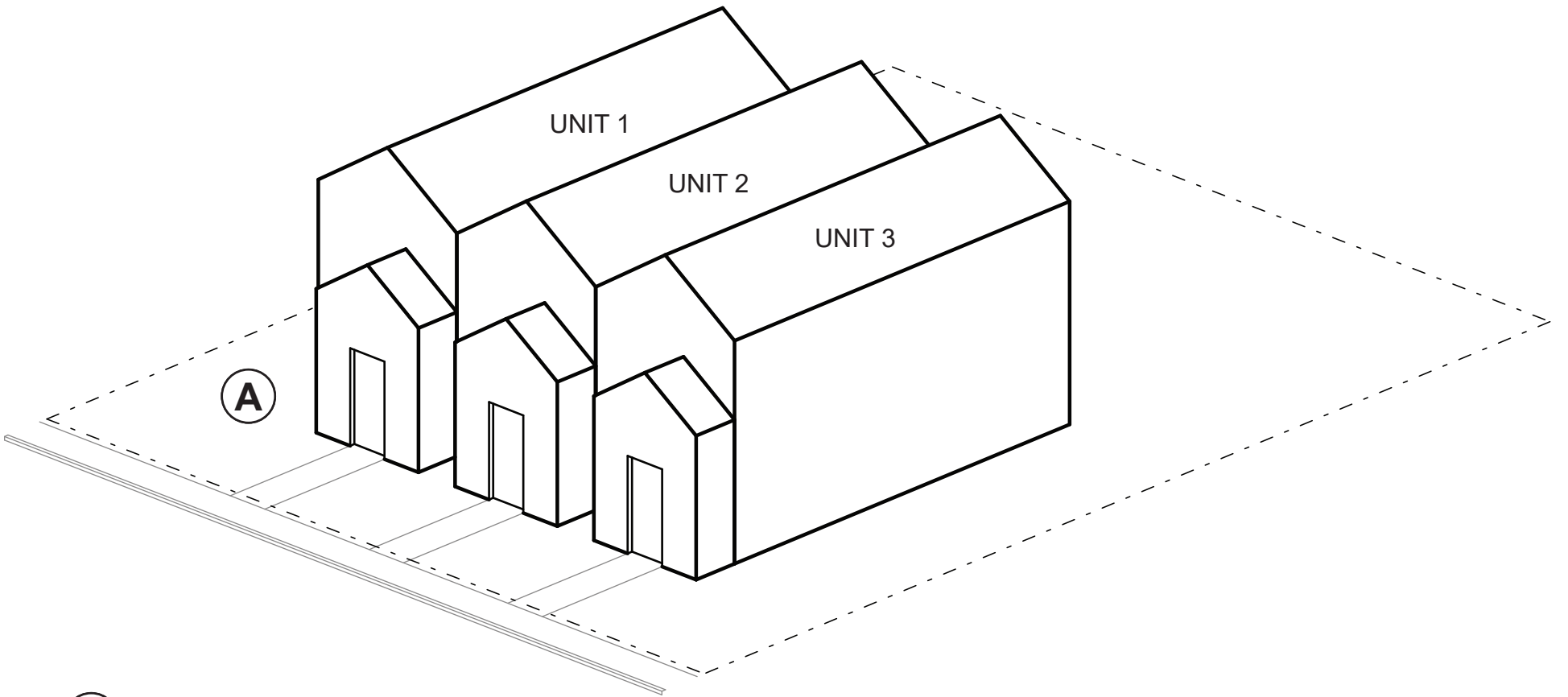
# Definition: Triplex - 1



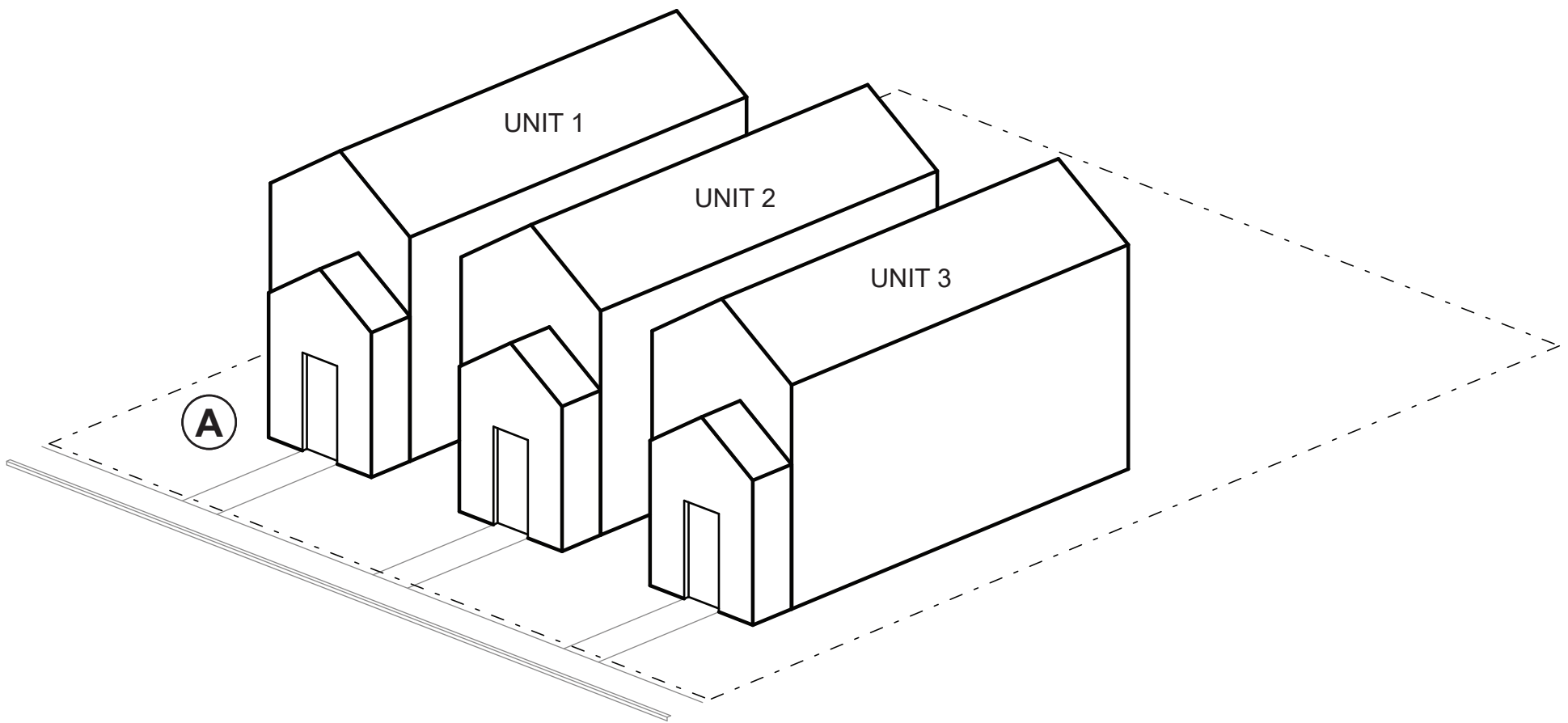
**A** Three attached dwelling units on a lot



# Definition: Triplex - 2 & 3

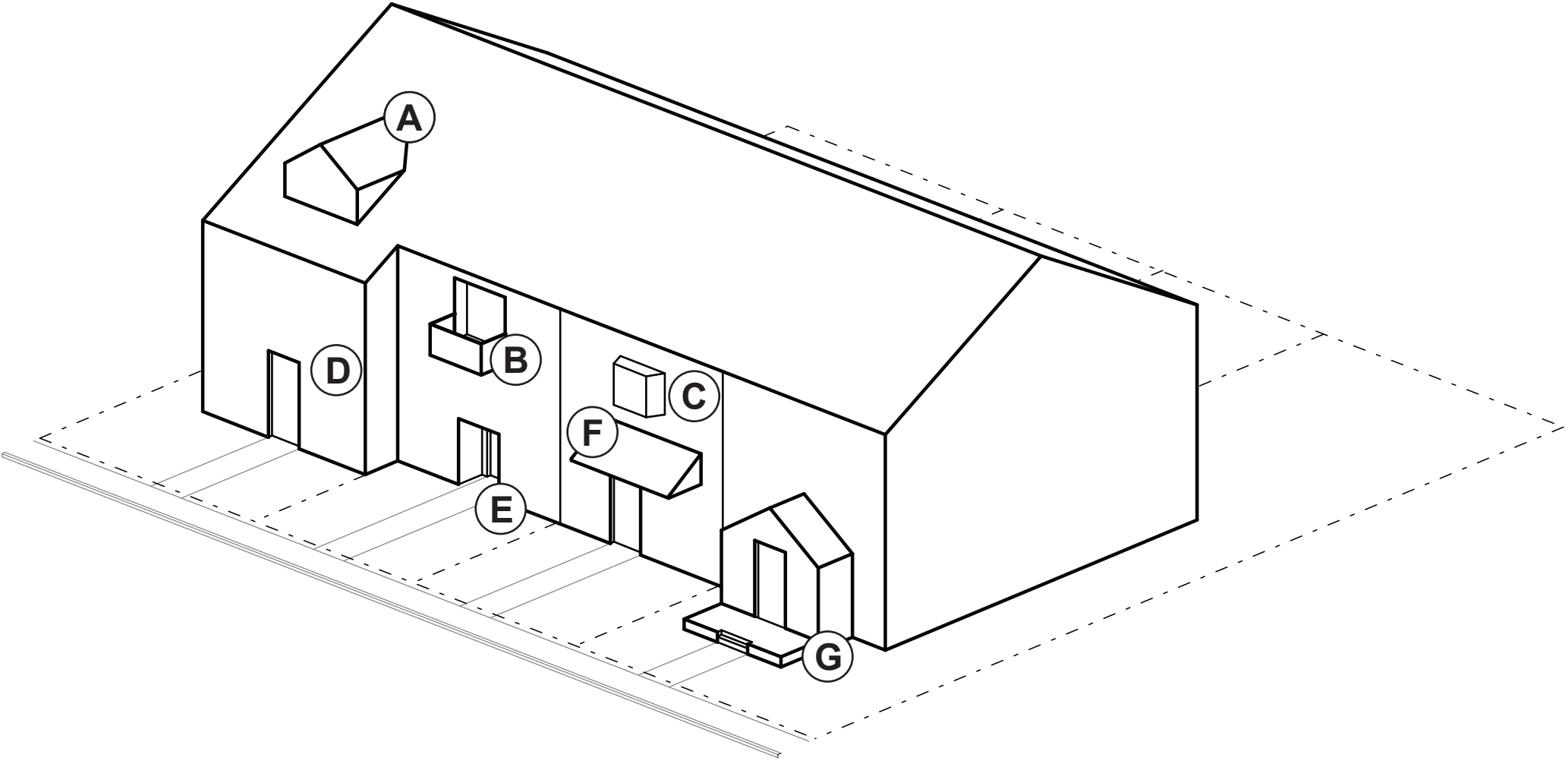


**A** Three attached dwelling units on a lot



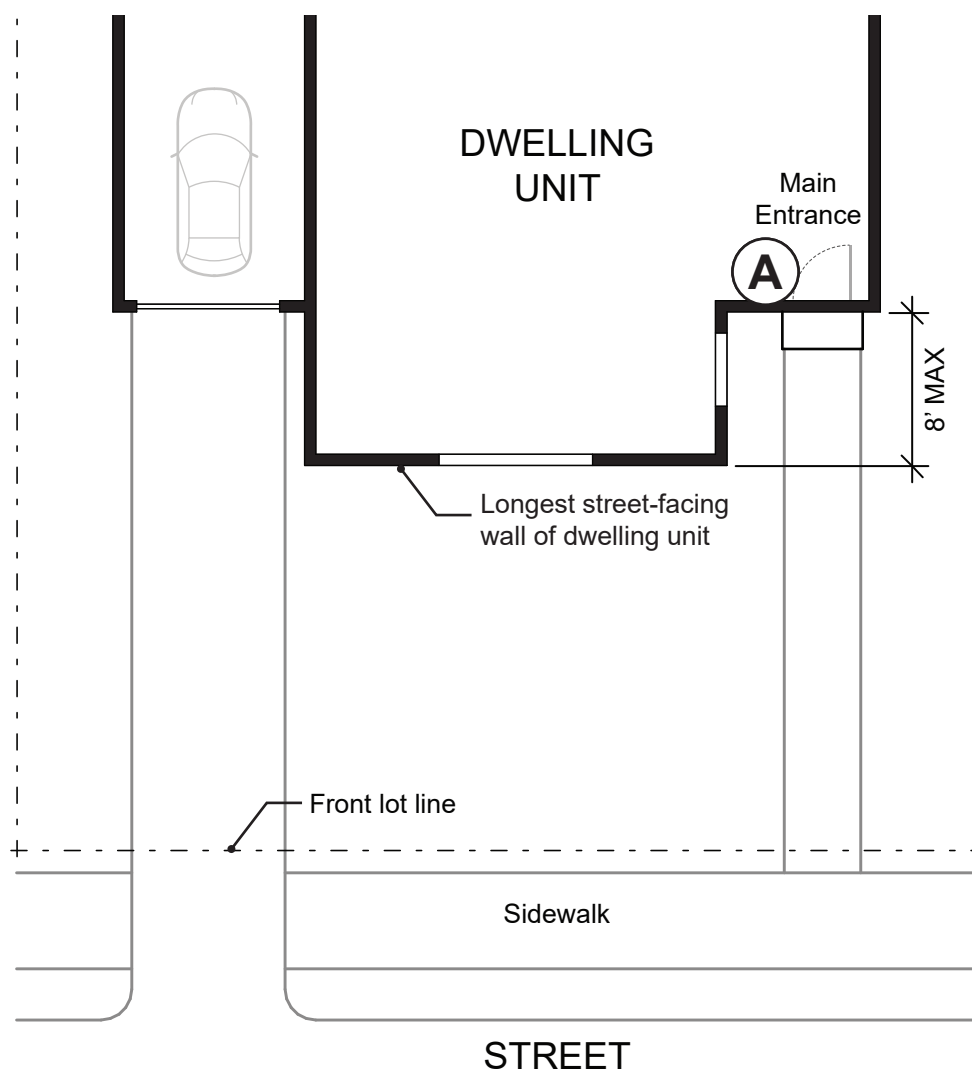
**A** Three detached dwelling units on a lot

# Townhouse Unit Definition



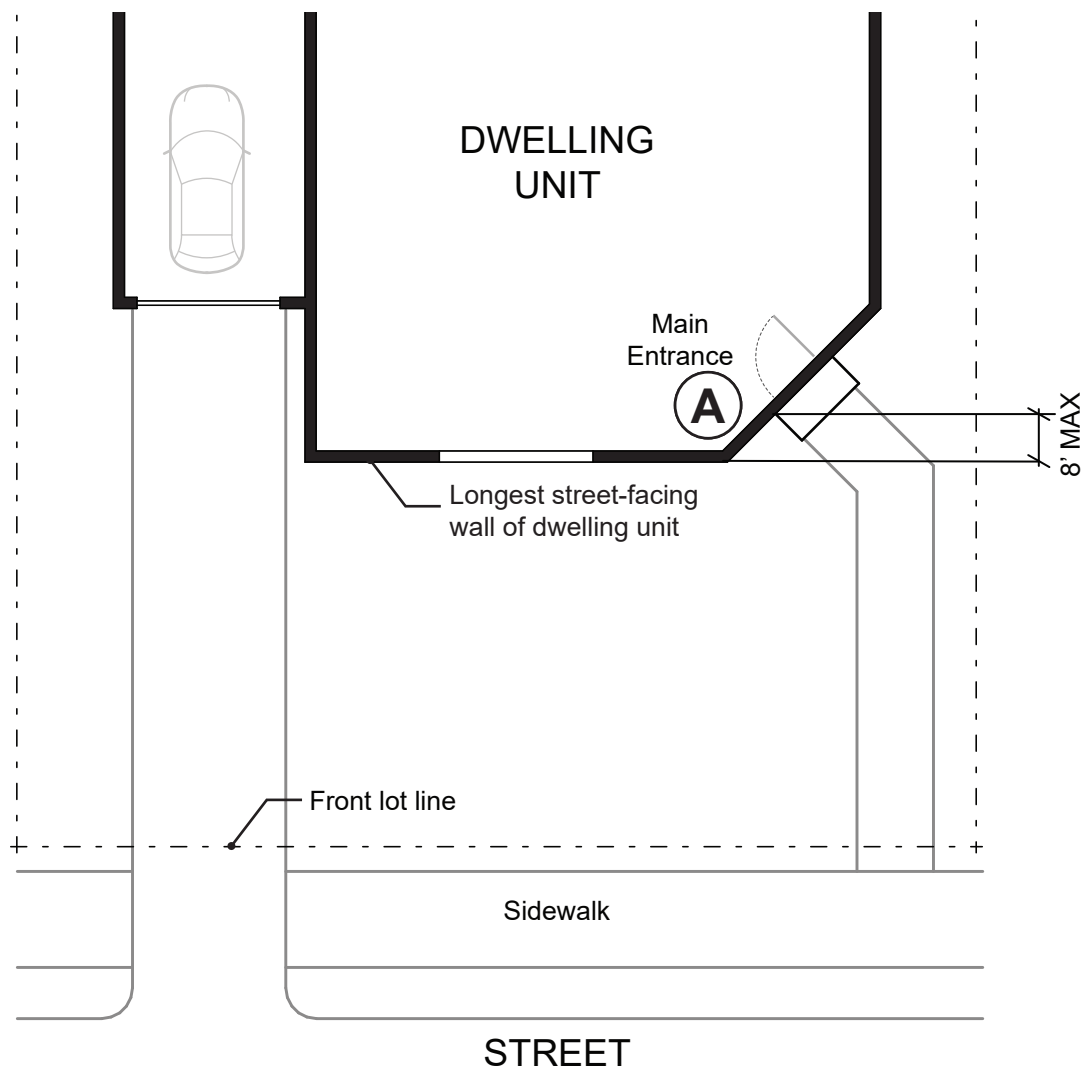
- (A)** Roof dormer, minimum of 4 feet wide (standard a.)
- (B)** Balcony, minimum 2 feet deep and 4 feet wide. Accessible from interior room. (standard b.)
- (C)** Bay window extending minimum of 2 feet from facade (standard c.)
- (D)** Facade offset, minimum of 2 feet deep (standard d.)
- (E)** Recessed entryway, minimum 3 feet deep (standard e.)
- (F)** Covered entryway, minimum of 4 feet deep (standard f.)
- (G)** Porch, meets standards of subsection (1)(b)(iv) of section (C) (standard g.)

# Triplexes / Quadplexes and Townhouses: Entry Orientation (b.i.)



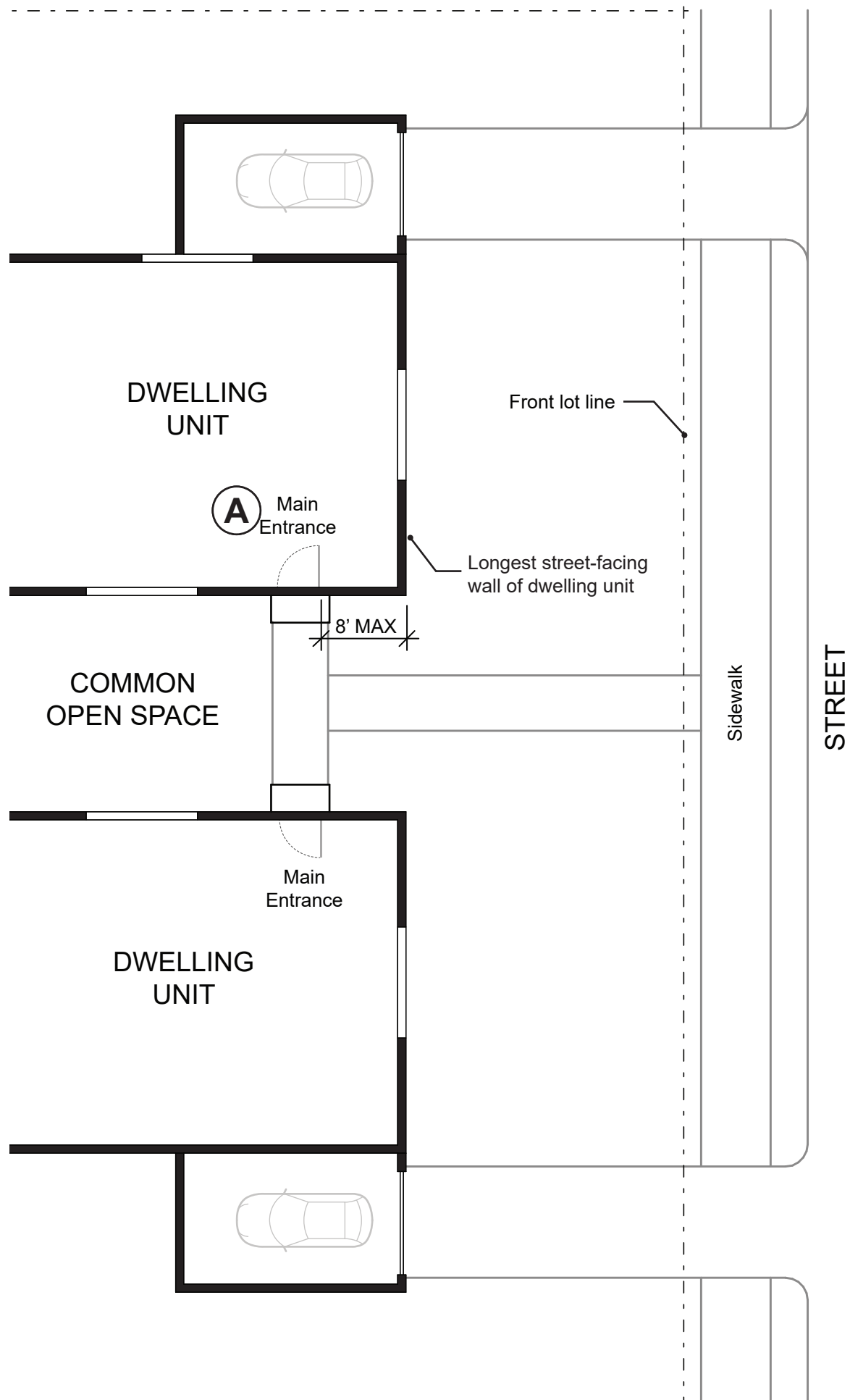
**A** Main Entrance is within 8' of longest street-facing wall of dwelling unit (standard a.), and faces the street (standard b.i.)

# Triplexes / Quadplexes and Townhouses: Entry Orientation (b.ii.)



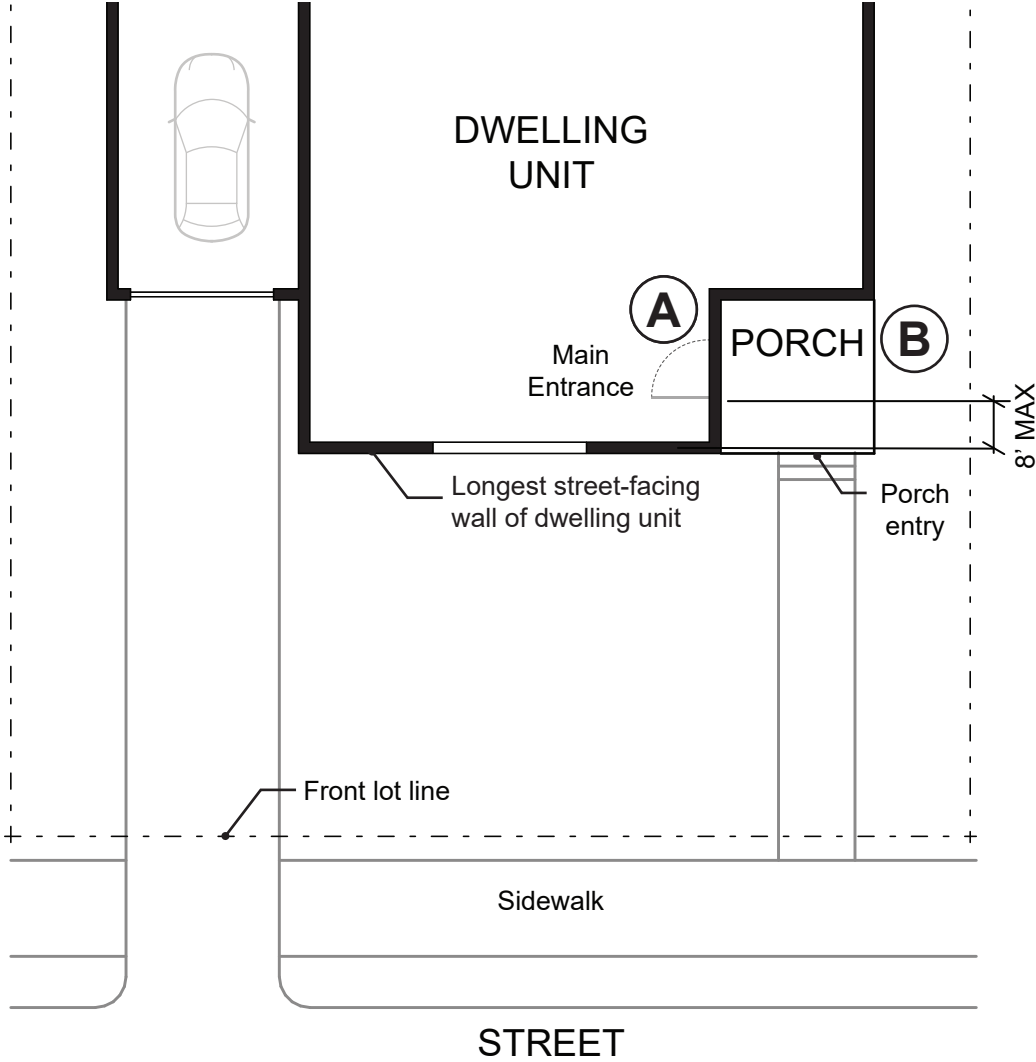
**A** Main Entrance is within 8' of longest street-facing wall of dwelling unit (standard a.), and at a maximum 45 degree angle from the street (standard b.ii.)

# Triplexes / Quadplexes and Townhouses: Entry Orientation (b.iii.)



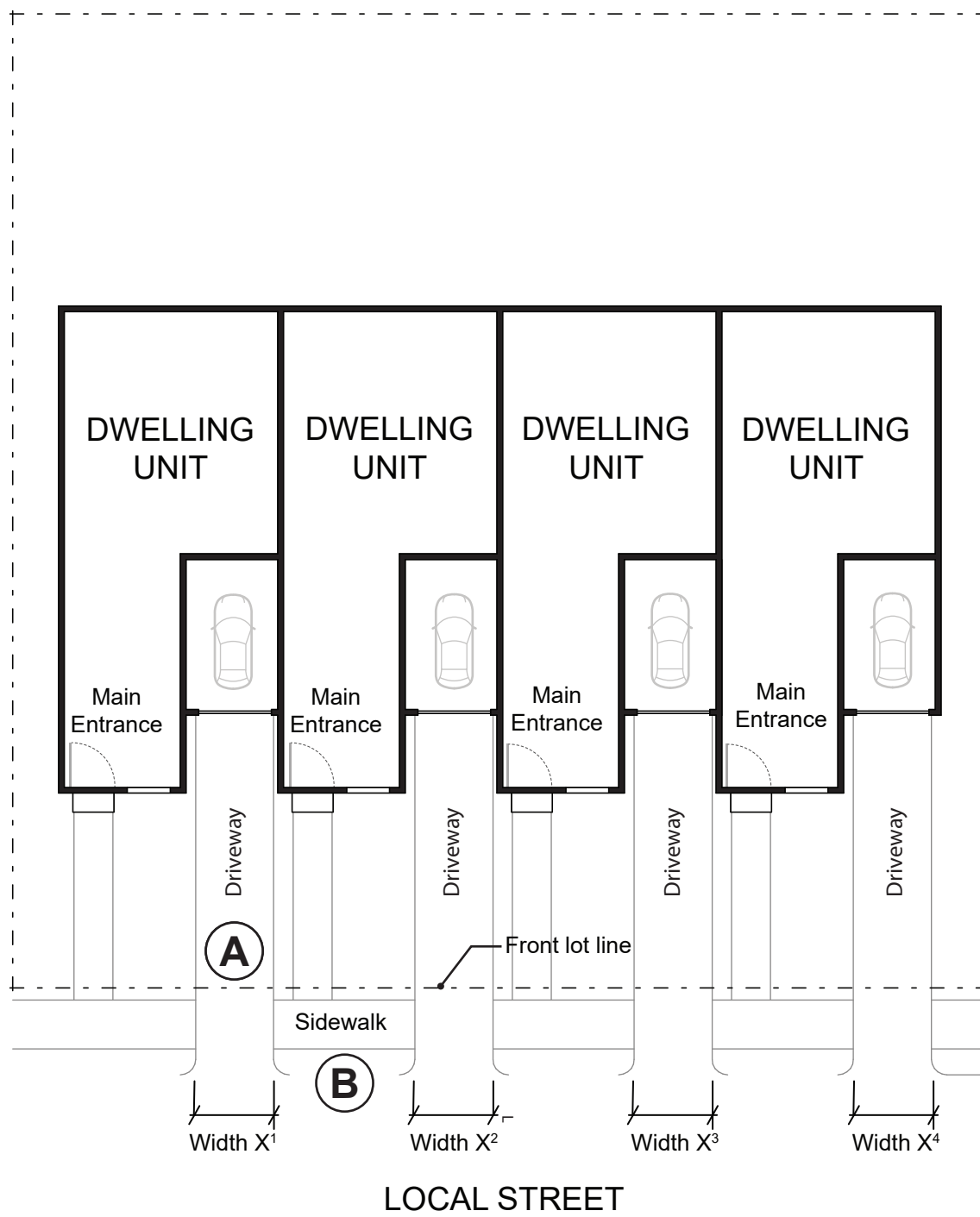
**A** Main Entrance is within 8' of longest street-facing wall of dwelling unit (standard a.), and faces a common open space adjacent to the street (standard b.iii.)

# Triplexes / Quadplexes and Townhouses: Entry Orientation (b.iv.)



- A** Main Entrance is within 8' of longest street-facing wall of dwelling unit (standard a.), and open on to a porch (standard b.iv.)
- B** Porch at least 25 square feet in area (standard b.iv.A.); and has one entrance facing the street or has a roof (standard b.iv.B)

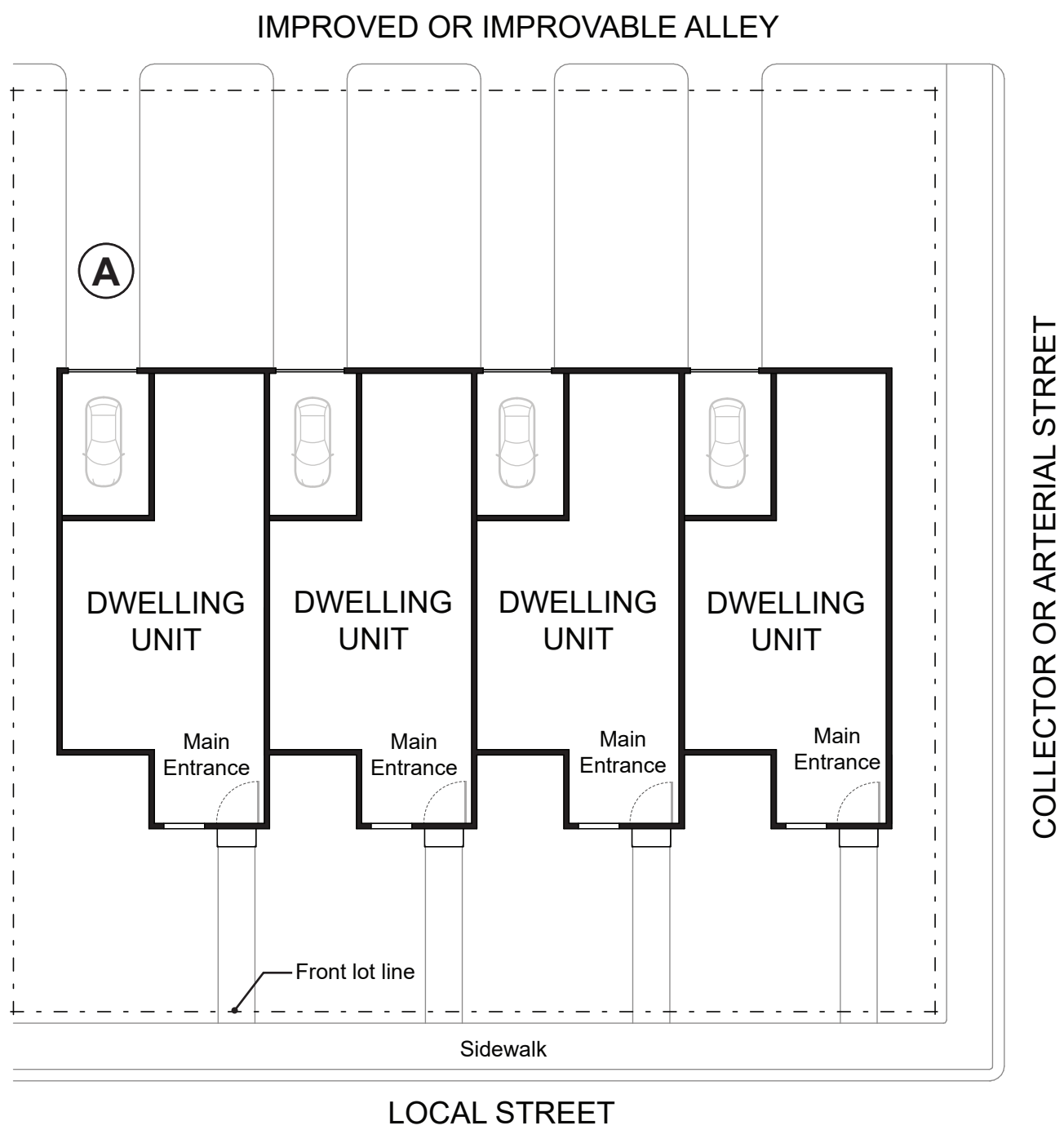
# Triplexes and Quadplexes: Driveway Approach (a.-b.)



**A** The total width of all driveway approaches (as measured  $X^1 + X^2 + X^3 + X^4$ ) must not exceed 32 feet per frontage, as measured as the property line (standard a.)

**B** Driveway approaches may be separated when located on a local street (standard b.)

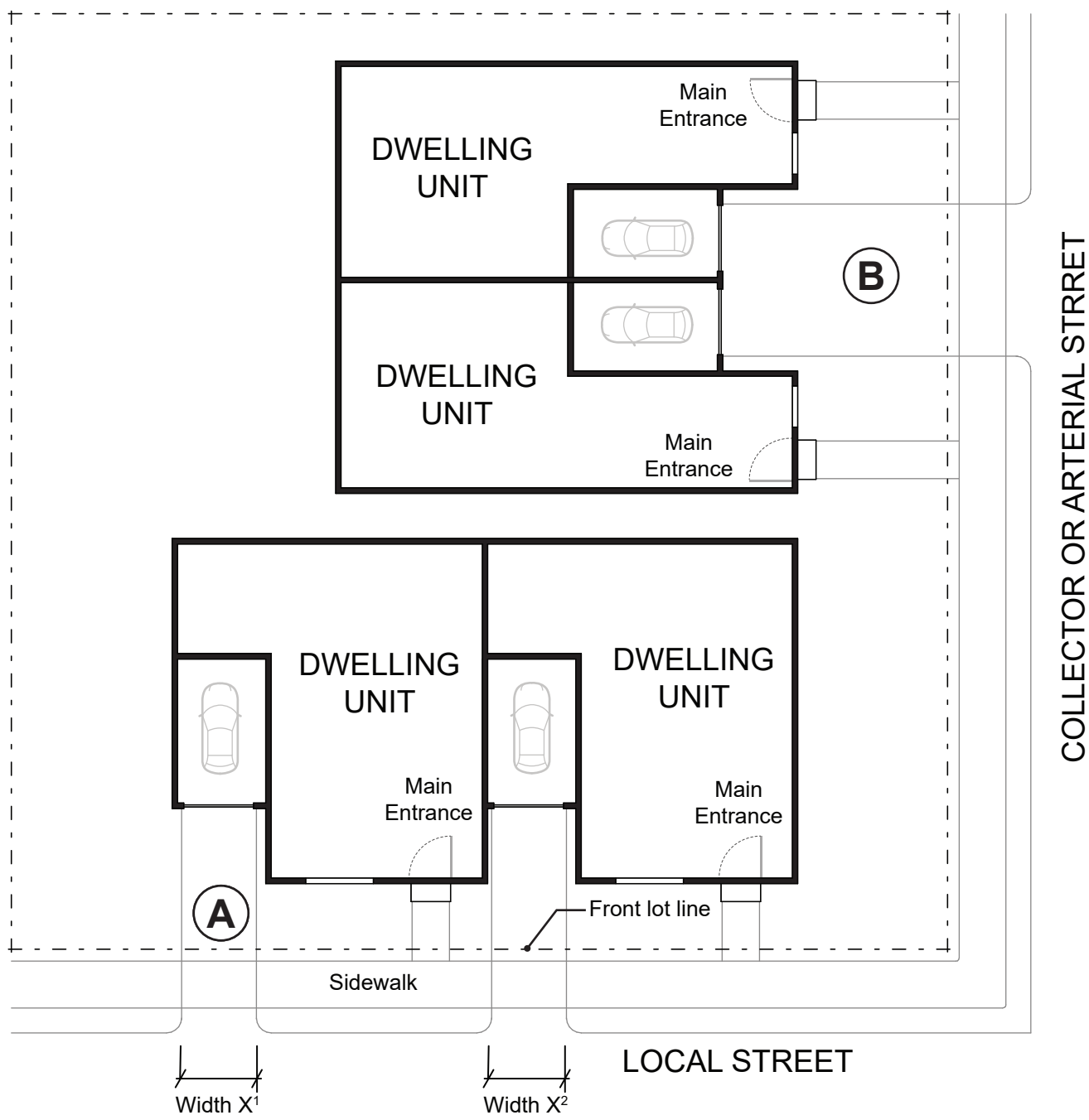
# Triplexes and Quadplexes: Driveway Approach (c.i.)



**(A)** 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 (standard c.i.)



# Triplexes and Quadplexes: Driveway Approach (c.iii)



- A** 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 (as measured  $X^1 + X^2$ ) on one frontage (standard c.iii.)
- B** or one maximum 16-foot-wide driveway approach per frontage (standard c.iii.)

# Triplexes and Quadplexes: Window and Door Coverage



STREET-FACING FACADE

-  Area subject to 15% window & entrance door coverage requirement
-  Qualifying window coverage
-  Qualifying entrance door coverage

# Triplexes and Quadplexes: Garages and Off-Street Parking Areas



- (A) Garage and on-site parking and maneuvering areas
- (B) Total lot frontage area

$$\frac{A^1 + A^2 + A^3}{B} \leq 50\%$$

**Middle Housing Model Code Technical Advisory Committee Meeting #8**

August 4, 2020; 9:00 am – 12:00 pm

Department of Land Conservation and Development (DLCD)

Zoom Virtual Meeting



**Public Comment Summary June 18 – July 29, 2020**

Date	Commenter	Commenter Type	Comments Summary	Comment Type
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.	<a href="#">Email</a>
6/21/2020	Andree Tremoulet	TAC	<p>A memorandum outlining recommended changes to the proposed Housing Production Strategy Report requirements and guidance, including:</p> <ul style="list-style-type: none"> <li>• Requiring cities to identify the housing classifications by tenure, affordability, and housing type that they intend to focus on in their strategies.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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</li> </ul>	<a href="#">Letter</a>

			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	<p>A letter from the Sightline institute advocating for minimum compliance standards that reduce the burden of off-street parking requirements on plex development feasibility.</p> <p>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.</p> <p>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.</p>	<a href="#">Letter</a>
6/25/2020	Daniel Pauly	Staff	<p>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 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.</p> <p>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.</p>	<a href="#">Letter</a>
6/25/2020	Ellen Miller	RAC	Email provides suggested approach for defining FAR: Floor area is defined by actual livable floor	<a href="#">Email</a>

			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.	
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".	<a href="#">Email</a>
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.	<a href="#">Email</a>
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.	<a href="#">Letter</a>
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.	<a href="#">Letter</a>
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.	<a href="#">Letter</a>
7/10/2020	Ed Sullivan	RAC	An email outlining four legal issues for RAC consideration, including:	<a href="#">Email</a>

			<p>The issue of a Housing Production Strategy that is based on an older Housing Needs Analysis with poor data/analysis. If the HNA schedule is the mechanism to update these analyses, that could allow for updated HNAs as late as 2028 for some jurisdictions. The issue of Model Code application in the event of a local jurisdiction failing to meet HB 2001 requirements with one or a few elements of their adopted code.</p> <p>Additionally, there is risk in the current enforcement framework of acknowledging codes that are not sufficiently in compliance with HB 2001.</p> <p>The IBTER Remedy should a local jurisdiction decide to not comply with HB 2001 or fails to remedy deficient infrastructure through an IBTER.</p> <p>The importance of having sufficient data on race and ethnicity in population estimates and/or forecasts to develop policy solutions to inequity.</p>	
7/10/2020	Ariel Nelson	TAC	<p>A letter urging the Department to revisit the current approach to minimum compliance for triplexes, quadplexes, townhomes, and cottage clusters, as well as the approach to "in areas". Argues that the current approach to rules prevent the ability for local jurisdictions to regulate middle housing. LOC recommends an alternative approach with the following elements:</p> <p>Every jurisdiction would be expected to allow middle housing in a way that promotes racial equity and reduces historic segregation by race, ethnicity and income by providing the opportunity for a wider range of housing types. Each jurisdiction would be able to define geographic areas</p> <p>Local jurisdictions' standards must allow middle housing types within each area designated within a jurisdiction with established state expectations.</p> <p>The administrative rules also could specify that middle housing must be allowed in high-wealth/low-poverty sub-areas</p>	<a href="#">Letter</a>
7/27/2020	Dan Pauly	Staff	<p>A letter from the planning manager at Wilsonville providing suggestions for the</p>	<a href="#">Letter</a>

			Department's approach to defining "in areas". The letter notes that for new communities, such as Wilsonville's Villebois community, providing flexibility for a local jurisdiction to incorporate middle housing types can result in a greater provision of middle housing options than the presumptive approach alone and allows cities to better plan for infrastructure and market conditions.	
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**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](#)

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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  
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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

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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
<b>Total Housing Units</b>				
Single-family detached				
Single-family attached				
Duplex				
Accessory Dwelling Units				
Manufactured Homes				
<b>Total Single-Family HU</b>				
Triplex or fourplex				
Five or more units				
<b>Total Multifamily HU</b>				

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](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.

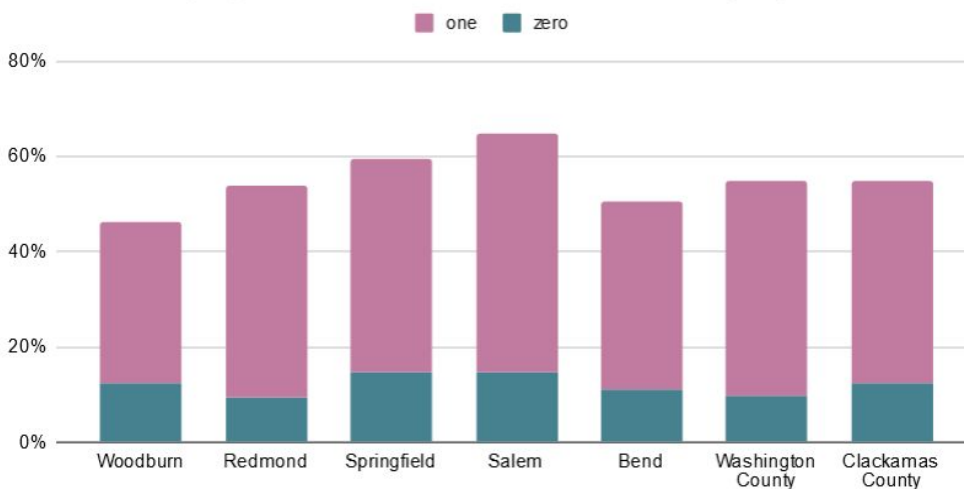
At the request of several members of DLCD's advisory committees, and informed by the new analysis from ECONorthwest, we're writing to urge a new option for parking standards in future discussion drafts of its model code for large cities.

**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**

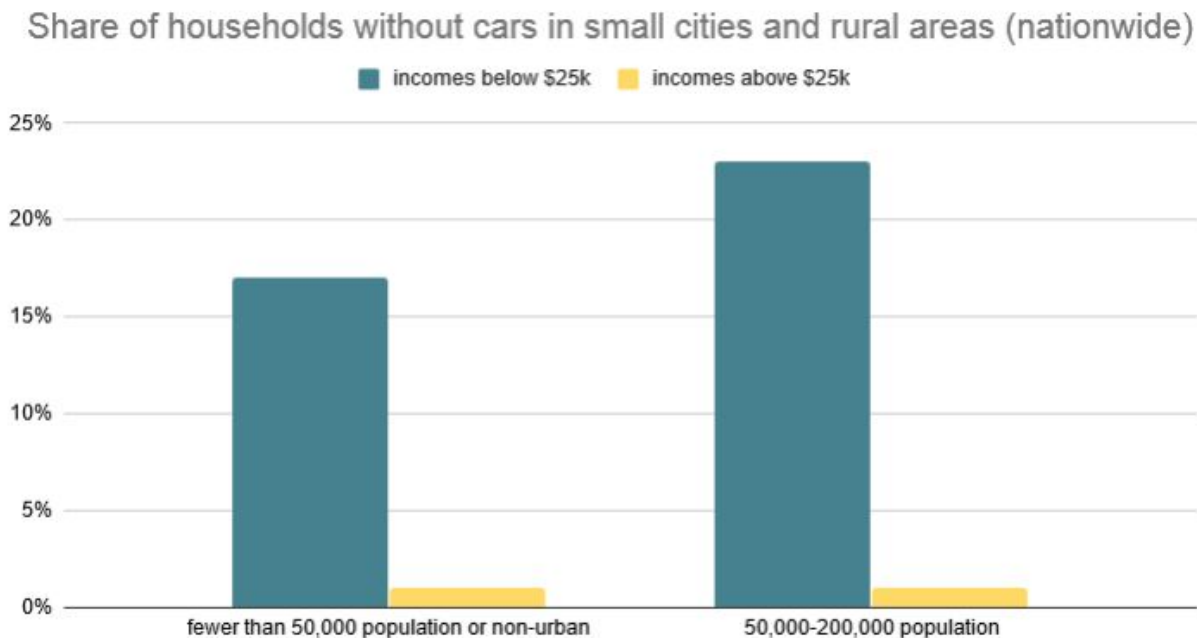
**Point 1: Zero-car households are common everywhere in Oregon.** In almost every jurisdiction covered by House Bill 2001's "larger cities" category, 10%-15% of tenant households own zero cars, and about half of tenant households, or more, own either one or zero.

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:

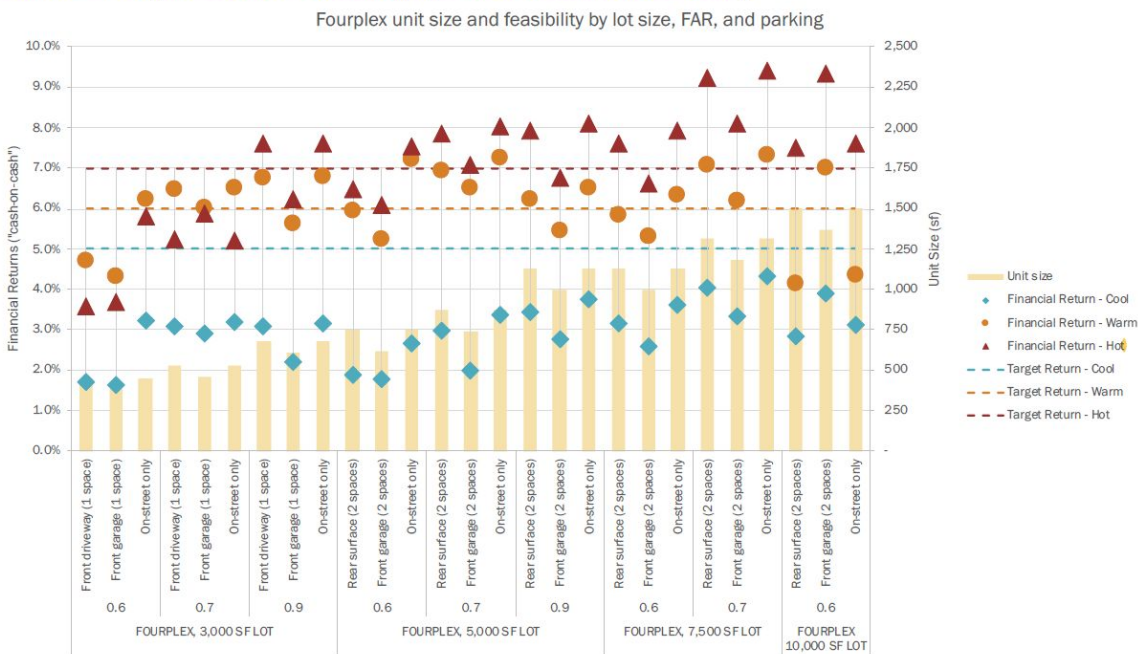
**Exhibit 2: Triplex Results Summary by Lot Size, FAR, and Parking**



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 20<sup>th</sup> century differs substantially from a city, like Wilsonville, consisting primarily of master planned PUD's incorporating a variety of housing built in the late 20<sup>th</sup> and early 21<sup>st</sup> 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", enclosed in a simple oval outline.

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

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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](mailto: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](#)

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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

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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.)<sup>1</sup> 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,

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<sup>1</sup> 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).<sup>2</sup> 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.”<sup>3</sup>

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<sup>2</sup> 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.

<sup>3</sup> 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

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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 “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.<sup>4</sup> 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

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<sup>4</sup> 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.<sup>5</sup>

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 facilities<sup>6</sup>—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.

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<sup>5</sup> 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.

<sup>6</sup> 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).<sup>7</sup>

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

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<sup>7</sup> 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)),<sup>8</sup> 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.

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<sup>8</sup> 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

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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

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**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

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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

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Michael Andersen | senior researcher, housing and transportation | Based in Portland | him or them  
Sightline Institute | [www.sightline.org](http://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](mailto:ethan.stuckmayer@state.or.us)>; Edging, Sean <[sean.edging@state.or.us](mailto: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

—

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M 503.333.7824 | Zoom: 702.268.5970 | [@andersem](#)



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

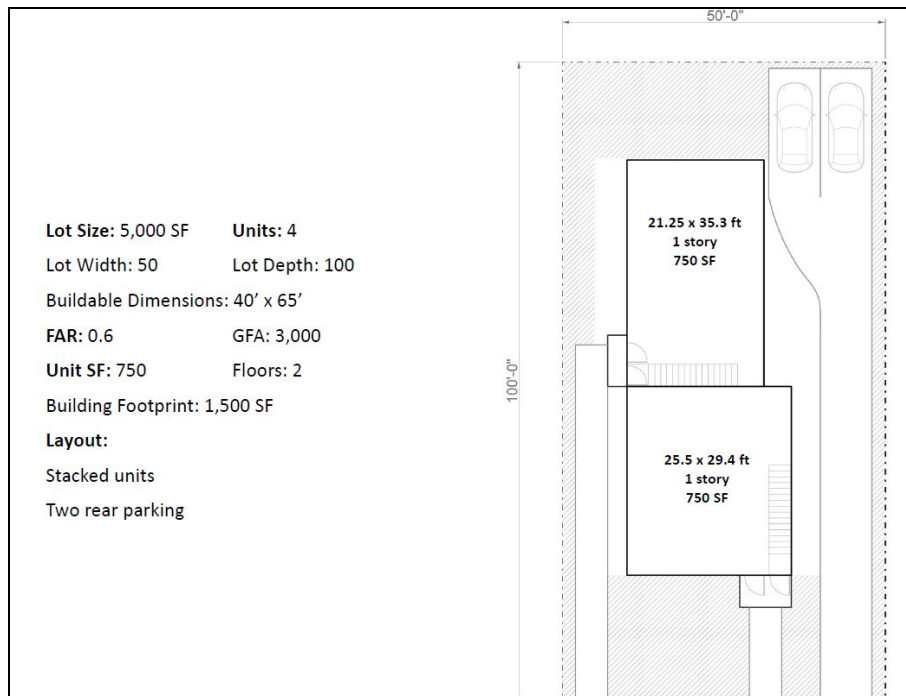
**Re: HB 2001 LCMCMC off-street parking requirements**

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. Covenanting 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.*

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**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

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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 DLCDC 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):<sup>1</sup>

(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

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<sup>1</sup> 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.

**From:** [Ed Sullivan](#)  
**To:** [Stuckmayer, Ethan](#); [Howard, Gordon](#); [Young, Kevin](#); [Edging, Sean](#)  
**Cc:** [SRINIVASAN, Kate](#) \* HCS; [Taylor Smiley Wolfe](#); [Mary Kyle McCurdy](#); [Andree Tremoulet](#); [Allan Lazo](#)  
**Subject:** RAC Meeting July 14, 2020  
**Date:** Friday, July 10, 2020 6:20:05 PM

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I have been through the packet and suggest there are at least four legal issues for the RAC and staff to consider. Here they are, including my takes on them:

1. The Folly of Construction of an HPS Superstructure on the Sandy Ground of Existing HNAs -- While I join most of the participants in wishing the success of the RHNA, that success is not assured unless and until the legislature acts favorably. The HPS approach will remain, however, and is informed by the information supplied under HB 4006 and existing HNAs. The latter may be adopted years ago and may never have been submitted to DLCD through the PAPA process. For those that have been submitted, there have been few (maybe no) LUBA appeals, so that, by operation of law, they are considered acknowledged. I'm not sure that makes HNAs immune from further challenge on non-goal matters, but the fact remains that they must be good because no one challenged them. For those who read these documents regularly, their quality varies greatly. Some, especially those done by ECONorthwest with good city cooperation, are excellent. Others are pretty poor. DLCD bears much of the blame for the poor quality of HNAs, as it has generally turned a blind eye to inadequate products and, to my recollection, has never taken an HNA to LUBA.

But HNAs are significant building blocks for the HPS, which are then only as good as the information and direction they provide. I have advocated, and still advocate, for standards for HNAs so that the state may devise policy using apples to apples comparisons, rather than give those who don't update their HNAs or provide poor information or policies a means of avoiding their housing obligations, given there is no right of appeal of a local government HPS under HB 2003, sec. 4(5) or from a department determination of its adequacy under sec. 5(5) (c). Arguably, one must wait another 6 or 8 years before housing obligations take root. That is an unacceptable result.

If the HPS rules do not require standards for HNAs now, then it should require the information that should have gone into an HNA to be submitted as part of the HPS documentation and then move quickly into rulemaking to set standards for HNAs. We should not reward inadequate or shoddy work with the benefit of the doubt or the deferral of housing obligations until close to the year 2030.

2. Deficiencies in Meeting the Model Codes -- We all know the model code comes into operation if a city fails to adopt all of the required elements to allow duplexes or other middle housing. But what happens if a city fails with regard to one or a few elements of these requirements? Does the whole code come into place or does it apply just to those elements that have failed to be adopted locally? If the former, that action may change many other housing requirements in a way wholly unanticipated by anyone. If the latter, there is still the risk of conflict of the imposed element being inconsistent with the remainder of the housing regulations.

Moreover, there is the issue of how nonconformity with the housing legislation is determined. There is no acknowledgment process, so the defaults are periodic review (which is virtually absent from the Oregon land use system) or the PAPA process, which requires filing within 21 days. The risk of not filing is that the housing regulations are deemed acknowledged (which

may not mean the provisions are immune from challenges on non-goal grounds). DLCD's challenges to PAPAs are as frequent as a summer snowstorm in Bend and leaving housing obligations to nonprofits only allows for a few additional challenges. And when challenges are made (perhaps by a builder who contends the local code violates HB 2001), the result is likely to be a remand with a waste of time and money all around. And if the local code is invalidated altogether, the applicant is sent back to undertake a review process that may be different than the one she originally undertook.

3. The IBTER Remedy -- What happens if a recalcitrant city does not allow for additional housing required by HB 2001 and either doesn't seek an IBTER or fails in securing that relief and doesn't replan and rezone land as required by that legislation? As I read HB 2001, LCDC could enter an enforcement order (and either require the grant or denial of development permits) or the withholding of state shared revenues. That is a fairly blunt instrument that should be more discussed than used and counsels for further thought on what inducements or penalties ought to apply in such situations. I suggest staff develop an administrative policy that doesn't reward delay on top of delay in providing for housing needs by a failed IBTER.

4. Data on Race and Ethnicity -- I understand that there has been an effort to require such data to be used in the formulation of the HPS and applaud that effort. I also understand that staff is working with the PSU Population Center to provide disaggregated data on a regular basis and hope that the RAC will support inclusion of that data as a regular element of housing reports. While there is a correlation between race and ethnicity on the one hand and income on the other, racial and ethnic segregation is not fully captured by income data. If we are to make headway on segregation in housing, we must have adequate data on which to measure the extent of that segregation and the effectiveness of our policy responses to the same.

I hope staff and the RAC find these suggestions helpful.

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



July 10, 2020

RE: HB 2001 Rulemaking and Middle Housing Minimum Compliance Standards

The League of Oregon Cities (LOC) writes to urge DLCD to revisit their current approach to the minimum compliance standards for triplexes and quadplexes, townhomes, and cluster cottages. In passing HB 2001, the Legislature made a clear distinction between requiring duplexes on every lot or parcel zoned for single family residential use and *not* requiring triplexes, quadplexes, townhomes, and cluster cottages on every lot, but instead “in areas zoned for residential use that allow for the development of detached single family dwellings.” The Department’s proposed minimum compliance standards overstep that legislative intent and the proposed “whittle away” approach effectively requires all middle housing types on all lots. When combined with the Department’s proposed restrictions on minimum lot sizes, cities are left with very little flexibility when designing their own codes to comply with HB 2001.

The current “whittle away” approach:

- Does not expressly allow cities to define different areas within their jurisdiction in which middle housing can be regulated in different ways, except for excluding specific geographic areas through the “whittle away” approach.
- Fails to provide a path for cities to retain middle housing strategies that are already working and have already produced middle housing.<sup>1</sup> Instead, the minimum compliance standards specify one approach statewide.
- Prevents cities from responding to context and community goals, particularly when combined with the minimum compliance standards currently proposed. Specifically, the current minimum compliance standards:
  - Remove flexibility and severely limit cities’ ability to use tools such as minimum lot size, maximum density, planned unit developments, and unit maximums per lot. The proposed minimum compliance standards prohibit cities from requiring larger minimum lot sizes for triplexes or quadplexes than for detached single family dwellings. This restriction discourages cities from proposing smaller minimum lot sizes for single family detached dwellings that would make home ownership more affordable.

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<sup>1</sup> Cities and counties in Oregon have used housing mix requirements, master plan requirements, Planned Unit Developments, minimum density requirements, reduced lot size requirements, zoning incentives (including incentives for affordable housing) and other techniques to promote middle housing in ways that produces a significant number of middle housing units.

- Do not allow a jurisdiction to adjust minimum parking requirements to deal with area-specific conditions, such as housing units with greater parking demand or situations where on-street parking is not available.
- Rely on a flawed or incomplete feasibility analysis that:
  - Only analyzes vacant lots (when most middle housing in existing neighborhoods will involve redevelopment or adding units to sites with existing housing).
  - Tests three different FAR scenarios that assume low maximum floor-area-ratios, which have since been revised in the draft, and contemplates a limited range of development scenarios when combined with height and other standards.

Given the need for additional flexibility, the LOC suggests a different approach to defining “areas” and drafting minimum compliance administrative rules for jurisdictions that will be approving their own development codes. The approach can be combined with the “whittle away” approach as proposed by DLCDC in some cases as discussed below, and would set expectations for jurisdictions’ performance while allowing cities a variety of ways to meet those performance measures. The basic components of the approach are:

1. **Promotion of racial equity and desegregation:** Every jurisdiction would be expected to allow middle housing in a way that promotes racial equity and reduces historic segregation by race, ethnicity and income by providing the opportunity for a wider range of housing types to be built in areas zoned for residential use that allow detached single family dwellings. The state’s administrative rules would set expectations. Jurisdictions would make findings, and the state would review to ensure compliance.
2. **Area definitions:** Each jurisdiction would be able to define geographic areas<sup>2</sup> within the jurisdiction within which the jurisdiction could vary its approach to allowing middle housing. The total of all the combined areas would have to include every lot “zoned for residential use that allow detached single-family dwellings” unless areas are removed using the “whittling away” approach.
3. **Standards and expectations:** Local jurisdictions’ standards must allow 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. Each jurisdiction then would approve development standards for those areas that allow middle housing. The state should establish minimum expectations for middle housing opportunities, such as through guidelines (allow middle housing on a “significant” or “substantial” number of lots, for example) or numerical standards (ensure middle housing is allowed on 30 percent of lots or greater within each area, for example).
4. **Opportunity not exclusivity:** In addition to the segregation and racial equity expectations mentioned above, the administrative rules also could specify that middle housing must be allowed in high-wealth/low-poverty sub-areas or neighborhoods and require jurisdictions to provide analysis that demonstrates middle housing is allowed within those sub-areas.

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<sup>2</sup> Boundaries can be zones, land use districts, Comprehensive Plan designations, development pattern areas or any other geographical solution jurisdictions develop to respond to local context.

The four points above outline a conceptual approach, which is described in more detail in options B and C in the attached letter from Brian Martin. Additional work would be required to develop administrative rules.

The LOC and individual city representatives are eager to work with DLCD staff and the Land Conservation and Development Commission to craft an approach that faithfully implements HB 2001, significantly increases middle housing opportunities and allows cities the flexibility to consider community history, public engagement and local context.

Sincerely,

Ariel Nelson, on behalf of the League of Oregon Cities

City of Albany

City of Beaverton

City of Eugene

City of Hillsboro

City of McMinnville

City of Salem

City of Springfield

City of West Linn

City of Wilsonville







July 27, 2020

Via email

Ethan Stuckmayer  
Senior Planner of Housing Programs  
DLCD

Dear Mr. Stuckmayer:

The City of Wilsonville continues to follow the middle housing rulemaking process closely and desires to share the following specifics regarding the important discussion and considerations pertaining to “areas zoned.”

At this point in the process and under our current understanding, the City does not have issue with the presumptive approach when applied to most areas of existing development. However, like several other jurisdictions, we feel situations exist where the presumptive approach is not the most effective approach in bringing about the best outcomes for middle housing, particularly in the case of new urban areas that are key to middle housing production.

In a previous letter, Wilsonville highlighted how the award-winning Villebois community could likely not be built pursuant to the current iteration of the presumptive approach. As further explained in the two next paragraphs, this is primarily due to the need for precise infrastructure planning and a developer preference to build single-family houses. Villebois is a master planned residential area with over 2,600 units that includes 8 different housing types that are not detached single-family, including carriage homes, fourplexes, town houses including many 5-6 unit buildings, apartment and condominium multi-family buildings, and integrated mental health housing (together totaling over 1400 units or just over half of total units). The housing forms a transect of density and height thoughtfully planned around an integrated parks system and village center.

Infrastructure financing and construction is complicated in these new urban areas such as Villebois as costs are significantly higher per unit relative to older development. It is essential the infrastructure strikes a delicate and precise balance between adequately serving development and being cost effective by not being overbuilt. The more certainty of eventual development, the better ability to plan infrastructure and keep the costs down to support affordability. In Villebois, if infrastructure had to be planned based on an unknown number of units in certain areas, it would have increased costs and fees charged to each unit.

Also, in Villebois the City faced consistent pressure to allow single-family homes in place of planned middle housing. In pressing the City to allow more single-family homes, developers often cited the ability to finance as well as profit margins to make it worth the investment. Other decision factors leading developers to favor single-family development included the developers and the contractors they had relationships with being most familiar with single-family development, and single-family development being the business model that they had always had. Having a rigid requirement for middle housing in certain locations in the legislative master plan was key to pressing back on developers preference and seeing it get built.

Under the presumptive approach a jurisdiction could still require only middle housing in certain areas while allowing middle housing and single-family in others. However, local political pressure would tend to push against requiring middle housing in certain locations since it is otherwise allowed everywhere. If middle housing is not required in certain locations and the developer that controls the land has a preference and/or business model for single-family development than there is not much the jurisdiction can do to ensure middle housing is built. The uncertainty for infrastructure and related cost increase would also still exist for the areas where the number of units is uncertain.

The Villebois example shows that a diversity of housing types can be developed at a variety of price points without a uniform lot by lot presumption. Using characteristics defined at a lot level rather than at a neighborhood level removes local flexibility and limits the ability to best plan cost-effective infrastructure and ensure development produces middle housing. There has been criticism of the word flexibility in the rulemaking discourse. Wilsonville is not asking for flexibility in outcomes, but rather flexibility in methodology to better bring the desired production of middle housing. Middle housing production in these new urban areas is key to the state's production of middle housing options, and special care needs to be taken for their unique circumstances.

Another specific example where the same concerns about the presumptive approach exists is the upcoming master planning of the area known as Frog Pond East and South, added to the Metro Urban Growth Boundary in 2018. City staff has real concerns that a lot by lot presumptive approach can prevent good planning related to infrastructure design and assurance of middle housing production. A condition of the UGB expansion reads, *"cities shall allow, at a minimum, single family attached housing, including townhomes, duplexes, triplexes, and fourplexes, in all zones that permit single family housing in the expansion areas."*

The contemplated method to meet or exceed this condition is not a presumptive lot by lot approach but rather a thoughtful approach, similar to Villebois, of considering a number of factors in determining where to place different types of housing. Factors to be weighed include access to commercial services and parks, ease of transportation access, ability to provide utilities at reasonable costs, etc. Wilsonville plans on meeting or exceeding all regional and state requirements for middle housing in Frog Pond East and South, but hopes for rules that focus on the outcomes rather than the method, maintaining maximum flexibility for the methods to produce the best neighborhoods. Wilsonville expects the approach it is

contemplating using to outperform a presumptive approach in both assuring cost-effective infrastructure and production of middle housing. The infrastructure cost challenges are even greater for Frog Pond than Villebois and staff has not seen a significant departure from developer preference to build single-family.

While not applicable to any current or contemplated projects in Wilsonville, the lot by lot presumptive method or approach could also prove difficult for comprehensive planning for redevelopment of existing urban areas for similar infrastructure planning and developer preference reasons.

Wilsonville commends DLCDC staff for continuing to explore a performance-based compliance approach allowing flexibility of method. This flexibility of method absolutely needs to be allowed for certain circumstances such as planning new urban areas, even if the presumptive approach is used for minimum compliance in developed residential areas.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Pauly", enclosed in a simple oval outline.

Daniel Pauly, AICP  
Planning Manager  
City of Wilsonville