

HOUSING RULEMAKING ADVISORY COMMITTEE



JOINT RAC AND MCTAC MEETING PACKET

TO: Housing Rulemaking Advisory Committee and Middle Housing Model Code Technical Advisory Committee Members

FROM: Ethan Stuckmayer, Senior Housing Planner

SUBJECT: Joint RAC and MCTAC Meeting Packet

Housing Rulemaking Advisory Committee and Middle Housing Model Code Technical Advisory Committee Members,

Thank you in advance for preparing for this combined Rules Advisory Committee (RAC), Middle Housing Model Code Technical Advisory Committee (MCTAC) meeting. The Joint RAC and MCTAC meeting is scheduled for **October 8th 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 or meeting notification email dated September 25. Zoom offers both a video conferencing option and a telephone option.

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

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

Request for Review and Comment on Meeting Packet Materials

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

The primary objectives for Joint RAC and MCTAC meeting are to:

1. Review and comment on Model Code fixes;
2. Review and discussion of suggested Division 46 changes; and
3. Close out the Advisory Committee process for HB 2001.

Joint RAC and MCTAC Meeting Packet Materials List

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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. The State of Oregon and the Department are better off because of your work to continually refine these rules.

Thank you,



Ethan Stuckmayer

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

Rulemaking Advisory Committee Charge:

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

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

**Joint Rulemaking Advisory Committee / Middle Housing Model Code Technical
Advisory Committee Meeting**

October 8, 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

RAC / MCTAC Meeting		
Time	Topic	Who
9:00 – 9:05 am	Welcome, Opening Remarks, and Review Agenda	<ul style="list-style-type: none"> • Jerry Lidz, LCDC • Ethan Stuckmayer, DLCD • Robert Mansolillo, DLCD
9:05 – 9:10 am	RAC / TAC Member Introductions <ul style="list-style-type: none"> • <i>Introduce yourself to the group</i> • <i>Name</i> • <i>Organization</i> 	<ul style="list-style-type: none"> • DLCD Staff • Angelo Planning Group • RAC / TAC Members
9:10 – 9:30	LCDC Meeting Discussion	<ul style="list-style-type: none"> • DLCD Staff
9:30 – 10:00 am	Model Code Fixes <ul style="list-style-type: none"> • Review changes to all parts 	<ul style="list-style-type: none"> • Robert • Matt Hastie, Angelo Planning Group
10:00 – 11:55 am	Discussion of suggested changes to Division 46:	<ul style="list-style-type: none"> • DLCD Staff • Matt Hastie, Angelo Planning Group
11:55 am – 12:00 pm	Next Steps and Wrap Up	<ul style="list-style-type: none"> • Jerry • Ethan • Robert

Land Conservation and Development Commission Meeting – Public Hearing on Large and Metro Cities
Proposed OARs and Model Code
September 25, 2020; 8:30am – 2pm
Zoom Virtual Meeting

Key Insights Summary

Master Planned Areas – City staff and housing advocates both expressed concern with the proposed Master Planned Communities provision. On the one hand, the rule did not provide enough flexibility to allow specific Middle Housing and single-family designated areas. On the other, it apparently solidified a pattern of development in stone with no future opportunity for infill. Commission discussion centered around developing an approach that gave local jurisdictions the certainty needed for infrastructure planning, while ensuring that after development, Master Planned areas would be open for future higher Middle Housing Development.

Off-Street Parking – Off-street parking was a primary concern of people delivering testimony at the hearing. There is concern for the under-provision of off-street parking leading to spill-over into the surrounding neighborhood and concern that the narrow streets in communities will not have sufficient parking to accommodate overflow. Commission discussion centered around the availability of options for people in selecting housing, noting that while many households have two or more vehicles, many have zero or one vehicle and do not currently have options to select housing with fewer parking spaces. Commissioner Lelack indicated that staff should look into approaches that provide options to jurisdictions in regulating off-street parking.

“In Areas” and the Performance Metric Approach – Commissioners recognized the difficulty in defining “in areas” in a manner that addresses existing patterns of exclusion while providing jurisdictions latitude in where Middle Housing is developed. Part of the difficulty in evaluating the Performance Metric approach is the lack of concrete “case studies” in which the amount of Middle Housing allowed is more clearly visible. Commissioners will need a better understanding how much Middle Housing will be allowed through any Performance Metric Approach.

Gentrification and Displacement – Some City representatives expressed concerns that the proposed rules didn’t adequately address unintended consequences such as displacement, gentrification, or the redevelopment of naturally occurring affordable housing. Commissioner Hallova clarified that to stop housing production over the fear of will not solve the issue of displacement. Affordable housing preservation is about preserving units, not zoning. Commissioners urged that we should not use zoning to restrict the affordable housing supply. Cities should look for other tools to preserve affordable housing supply, several are proposed within HB 2003. Commissioner Hallova also proposed, and others agreed, that staff conduct an analysis of a city implementing the Performance Metric Approach to measure the impacts of displacement.

Intentionally Dismantling Segregation and Inequality – There was concern among people delivering testimony that the proposal from the Fair Housing Council of Oregon zoned on the basis of race. Commission discussion centered around the history behind racist patterns of segregation and exclusion that were reinforced by single-family exclusionary zoning, and the necessity to intentionally push back on exclusionary policy of the past to achieve more equitable outcomes. Any approach adopted by Commission will need an intentional focus to reverse patterns of exclusion and achieve more equitable housing outcomes.

For the full recording of the Commission’s September 25 meeting including staff presentations, Commission question and answer, public comment, and Commission deliberation, please visit the LCDC webpage at: <https://www.oregon.gov/lcd/Commission/Pages/Meetings.aspx>

**Special Stakeholder Meeting
Refining the Performance Metric Approach
September 18, 2020**

Key Issues Summary

Clear Articulation of Compliance Pathways – Participants noted a lack of clarity about how administrative rules would be applied. This makes evaluation of the performance metric approach challenging, because it is not clear what lands would be subtracted from allowing middle housing in total. DLCD staff should produce an explanation or graphic aid that clearly indicates possible compliance pathways a jurisdiction can take to reach compliance with Division 046.

Codes, Covenants, and Restrictions – There was question as to whether local jurisdictions should identify and consider CC&Rs that limit middle housing in their development of middle housing codes. There is concern that areas with existing restrictive CC&Rs could allow middle housing in the zoning code while functionally prohibited by CC&Rs. However, tracking the existence of CC&Rs is a challenging task that requires significant cost from working with a title company and does not necessarily result in an accurate set of data.

An Equitable Distribution of Housing – There is concern from some participants that the Performance Metric will allow the continuance of patterns of economic and racial exclusion, especially in areas with significant capital. They note that “flexibility” and “local context” are not specific enough and any approach must be clear enough that it can be evaluated to ensure it is not perpetuating segregation.

Percentages of the Performance Metric Approach – In general, participants representing local jurisdictions advocated for a reduction to the total required middle housing allowances, noting that the percentages need to be lower in order to provide true flexibility. Housing advocates either supported an increase in the percentages (except areas vulnerable to gentrification/displacement) or supported the elimination of the Performance Metric approach altogether. It seems that there is some agreement between members that if there is a compelling rationale, including lot/street configuration and equity considerations, then the local jurisdiction should be able to limit middle housing in particular areas.

Gentrification and Displacement – There is concern from some participants that development pressure resulting from Middle Housing will disproportionately affect areas with naturally occurring affordable housing, resulting in the displacement of existing residents. It is clear that staff will need to ensure Division 046 includes provisions to mitigate the potential for gentrification and displacement.

Attendees

LCDC/DLCD Staff:

Anyeley Hallova
Ethan Stuckmayer
Gordon Howard
Kevin Young
Palmer Mason
Robert Mansolillo
Samuel Garcia
Sean Edging

Colin Cooper
Debbie Aiona
Ed Sullivan
Ellen Miller
Jerry Lidz
Kim Armstrong
Kol Peterson
Mark Rust
Martha Fritzie
Mary Kyle McCurdy
Nancy Donovan
Peggy Lynch
Theresa Cherniak

Participants:

Allan Lazo
Ariel Nelson

Meeting Minutes

Performance Metric Approach Presentation

- Peggy: The calculation does not include goal-protected lands, correct?
 - Staff: It does not.
- Mary: Similarly, the equity calculation does not include the “whittled away” lands as well, correct? Also, how existing CC&Rs are managed is a question.
 - Staff: That is correct. Managing CC&Rs is a significant question we will need to address.
- Kol: In the OARs, is the minimum compliance going to be spelled out? Are the Model Code standards going to be in the OARs?
 - Staff: The Model Code will be an attachment to Division 046, under the applicability section
- Mary Kyle: None of this includes what I thought was an additional route, which was alternative siting or design standards.
 - Staff: That’s not an “in areas” factor. That is an alternative path to apply standards other than minimum lot size or maximum density.
 - Mary: So you’d have to pick one of the three paths and then on top of that, you can apply alternative siting or design standards. So it could apply across the board.
 - Staff: Alternative standards are designed for specific and detailed elements.
 - Mary: This is another level of complexity to think through. This could result in a lot prohibiting middle housing.
- Ellen: I think it’s really important to have this path to compliance. I agree with Commissioner Hallova that we need to improve on this. One thing I see missing that I think should be very apparent. If you go through Division 046, the first thing cities can do is “whittle away” goal-protected lands, infrastructure lands, master planned communities, and federal/state regulatory areas. This doesn’t show that cities already get that. Under siting and design standards, you need to show where cities are able to utilize alternative standards.
 - Staff: We will develop a more understandable flow chart.
 - Allan: I agree with Ellen that those earlier steps on these compliance paths are important on this graphic.
- Mark: I’m sharing in the confusion that’s been expressed. Originally, the “third lever” was the alternative siting or design standards. Now, this isn’t referred to as a lever, but the Division 046 should be over all sections. There is need for more clarification. To touch on alternative siting or design standards. On existing/enforceable CC&Rs, this is news to me. Is there an effort to somehow supersede existing CC&Rs?
 - Staff: What we’ve heard on CC&Rs is that it would be problematic to count lands with existing restrictive CC&Rs. We are trying to build rules that acknowledge the existence of them.
 - Hallova: The policy already is that they can’t be changed. This just acknowledges that. If one decides that CCR lands be taken out of the equation, this chart should say that.
 - Mark: It’s concerning to hear this now for the first time. I don’t think this should be shown now given that it’s not part of the conversation. It would entail an inordinate amount of work to account for existing CC&Rs. We had to engage a title company, which was expensive and not accurate.

- Martha: Mark articulated what I was going to say. For unincorporated counties, this is extraordinarily difficult to track CC&Rs.
- Peggy: Following Mark and Martha, it's not that we can ignore their existence, but it would be impractical to figure out which ones are active, dying, or renewed. Earlier portions of this slideshow that shows lots that might be eligible. Just like CC&R issues, I am concerned about sharing that piece of data with the world, because it may not be accurate.
- Mary Kyle: I agree with Peggy and Ellen that you should include up front and in this graph the deductions that are made before you start down the "Division 046" side. I am also confused about what was originally the "third lever". On CC&Rs, I didn't raise it because it was easy, but it's a continuing issue. Many cities have old CC&Rs that are no longer active. Having some sort of understanding that these actively exist and as we get to percentages is that the existence of these shouldn't hinder the letter or spirit of the law. I hope you all are thinking about it. It's a messy thing, and I'm glad 2001 doesn't allow these to move forward. I don't have an answer on how to deal with these getting in the way.
 - Hallova: Whether it is or isn't included, there should be a footnote.
- Jerry: I agree with the last few comments on CC&Rs, but however we approach it, we should start with the understanding that the CC&Rs are contrary to public policy. I am reluctant to reinforce them by rule.
 - Hallova: Is there a process by which one states that? When applicable, one should work to change this?
 - Palmer: We could just take the language from the statute that after a certain date, these restrictive covenants can no longer restrict middle housing.
- Mary Kyle: I am glad that we are starting these conversations, but this is just a start. We need to be able to talk through these issues.
- Ellen: I agree with a lot said including the legal complexity. From our perspective, the reason this conversation is important is that we are trying to assign value to these performance metrics. Are these good enough? We don't know the total number of lots that can legally allow middle housing types. I don't think this is new, but it's really part of this overall calculation. These metrics have to meet the intent of the legislation.
- Allan: What Ellen is pointing out is that these performance metrics, there are a lot of complex pieces moving. We have to figure out how to set the baseline for these metrics – is it 70% of what? I reference the memo – your desire to focus on the performance metric. We've provided comments on the other approaches, including whittle away and alternative siting/design standards. On performance metrics, our concern is the dynamic between allowing flexibility and ensuring specificity to ensure we get the equitable distribution that we are trying to capture. A metric that looks at the demographics of census tracts and bases the percentages on the demographic makeup of a census tract. Among these percentages, where are these lots located? A lot of the conversation is the "how", but the "where" is also a concern. If we go down a pathway can exclude middle housing, could a City delegate all of their percentages to those areas. It speaks to this need to address this issue which is related to economic and racial segregation.
 - Hallova: The 75% metric is the provision that ensures this isn't pushed to one area of the city, correct? Allan, does this not meet the intent?
 - Staff: Correct.

- Allan: Because this approach was developed late, we want to see how this plays out.
 - Hallova: While it's not on this chart, signaling the amount that could be removed would be helpful.
 - Staff: That analysis is well worth it
- Kol: A few questions – It sounds like Mark in the City of Bend ran into this. It would be a good test case. In cities' perspective, what does this performance metric accomplish? What is the goal?
- Brian: Cities are asking for flexibility to deal with local context, equity considerations, conditions, etc. The flexibility is also consistent with the House Bill, which said duplexes on all lots/parcels and other middle housing in areas. A few examples:
 - Cities deciding that some middle housing types work better than others, such as allowing triplexes on interior lots and quads on interior lots.
 - Identifying areas that are vulnerable to displacement and scaling back middle housing that is allowed there. We are planning to provide information to this to LCDC – e.g. the Allan Blvd. district. They're worried about displacement there.
 - The performance metric standards are too high. There have been a lot of comments so far about the percentages and how they are calculated. I don't know if our data is perfect, but the performance standard of 70%, we have 67% of lots above 7,000 SF. The point here is that we are going to have "true flexibility" we need lower percentages. If it helps DLCD staff, the siting or design standards methods here or elsewhere. In the performance standards, you don't get to count a lot as allowing unless the standards do not cause unreasonable cost or delay.
- Mark: I don't think the performance standards do what we advocate for, which is provide flexibility. The local context piece is important. In Springfield, there are areas more conducive to cottage cluster development types and others more conducive to townhomes. Trying to figure out how to make that work is the push for standards that can be more flexible.
 - Hallova: When you say "how to make that work" – flexibility to what end? Through our whole discussion, it has been "flexibility for flexibility's sake". I still don't understand what the downside is.
 - Mark: E.g. fourplexes, whether using the minimum compliance standard and based on DLCD's research, that's about 60% of lots. If we wanted to choose the performance standard, instead of allowing fourplexes of 60% of lots, we would need to allow it on 70%, which I think is too much. It's all the way from 40% to 90% of lots. It's kind of a "one size fits all" standard. For Springfield, we may do subarea planning and say "here's a certain area conducive to fourplexes" where we allow it in the full area, but another area that's not conducive to fourplexes.
 - Hallova: On minimum lot size and maximum density – these two control the ability to say "this needs more room" which is different than "can it happen there". E.g. I am about to buy a triplex, which looks like an SFD. It doesn't need a larger lot. There's this conversation to act like a tri/quadplex is a large weird thing, which is what I'm struggling with. The cottage cluster stands out as it might need more room, but these plexes are right across the street from me. I'm having a hard time with the premise that these are foreign spaceships that are landing into cities.

- Kol: It sounds to me like the people who are proposing this sounds like this is not achieving what they want and the advocates say this is complex and does not achieve the intent of the bill. I don't think this is working for everybody.
- Hallova: It seems like the discussion is what the percentages that should go in each town are. I don't hear anybody arguing things for minimum lot size and maximum density. It sounds like Mark and Brian want flexibility to decide where things go on the ground. Is this a benefit at all?
- Mark: I think it's not equitable amongst all cities. Brian put together a different set of performance standards that's a layered approach.
- Hallova: I understood needing to meet certain percentages. But if this isn't the flexibility tool you want, why are we spending time on this?
- Jerry: Mark, can you give us more specificity about why certain neighborhoods would be appropriate for certain types of middle housing. I understand there are places where you don't want to have it, but what Kol and Anyeley are asking is "why"?
- Mark: I provided a map in the last LCDC meeting, there's a close in older neighborhood with narrow, deep lots. Different committees mentioned not wanting people to buy up these lots. To us, these narrow lots are not conducive to cottage clusters. If we're required to allow a certain percentage of cottage clusters in this area, it's a false inventory for cottage cluster development. Out further to the outskirts of town, there are lots developed under county standards that are larger. Some are low or medium density residential. Those type of larger lots are more conducive to these housing types. If we took our inventory of cottage clusters and placed them there and our townhouse units placed elsewhere, we may have different percentages than the 75% standard.
- Jerry: Those are helpful to me. The requirements are to allow "at least one" middle housing type on 75% of lots.
- Mark: The 50% should be 50% of lots over 7000 square feet.
- Hallova: The cluster is a separate thing. All the other stuff is not controversial in any way.
- Mary Kyle: I think people are operating under two fears. 1. We will whittle this to no lots and 2. These will be allowed everywhere and will be built. Both are unrealistic expectations. I want to be clear, when I hear "cities need flexibility to deal with local context and certain areas are not conducive to middle housing" – that is unacceptable. I live in a city and have worked in other cities where those arguments are used to preclude affordable housing and people. There has to be specific definitions about what "doesn't fit", because local context is used to preclude any housing type which isn't a SFD. In Portland, the RIP project, the square footage for plexes are the same as a SFD. My experience, these words are used to get out of requirements and I'm very concerned this will be used to perpetuate patterns of segregation. However we define this, it has to be clear enough that it can be evaluated to ensure it is not perpetuating segregation. "Flexibility" and "local context" are not specific enough. The letter has an approach which tries to get at that anti-displacement piece into it. Where they are and are not allowed need to have clear explanations so that we can evaluate how cities are doing against the intent of HB 2001.
 - Staff: We will send the letter later. On how we came to the performance metric approach – part of the conflict was that the initial whittle away approach, there were a few clear categories to whittle away. Cities mentioned needing a way of defining other

examples where middle housing does not make sense. The third lever was developed for this but is too subjective and doesn't provide sufficient clarity. The performance metric approach was intended to provide more clear standards, indicating that if you demonstrate that there's a significant number of middle housing allowed in a city - that would be in compliance.

- Hallova: Even if you allowed cottage clusters in skinny lots, a cottage cluster likely wouldn't be built, but the problem here is thinking about the maximum is limiting us. Conditions can change over time and developers can respond in different ways. Planning often wants to force what development will happen and the reality is we don't know.
- Palmer: To add to Ethan's explanation, our challenge is trying to challenge policy direction and put it together in a way that's clear and objective, and other than knowing that these other middle housing types aren't allowed on every lot or parcel, there isn't a lot of clarity about what we should do. In addition to flexibility, cities wanted a clear standard and the third lever didn't provide assurance that an ordinance would be in compliance. That's where the metric approach came up.
- Brian: I think the performance metric is clear and easy to use. Cities will approve zoning codes and there's some math/analysis that needs to be done. It's a technically workable approach. There's disagreement on how much is enough. On 'how you justify doing less'? On the other hand you can ask "how can you justify percentages that are so high?" Local governments proposed the performance metric approach first and ways to ensure that housing type segregation couldn't continue. I am very interested in this not being structured so certain neighborhoods can get a pass. What I would like to see are lower percentages so it's possible for cities that run into situations like displacement or have no street parking. I understand the skepticism, but I'm hoping for some middle ground that allows us to make some choices and has a substantial amount of production.
- Allan: I agree with all of those sentiments. A lot of this discussion is that tension between the folks on this call who have good intentions and those who aren't here and don't have good intentions. In talking about the history of the bill overall, although not directly in the legislative intent or bill, economic and racial segregation has to be a piece of these rules. Ending single-family zoning is about ending economic and racial segregation.
- Palmer: The goal of the bill is to change the 100 year track record and do something better. Not just to see more middle housing units, but to see greater inclusion. That is why we have the 75% per census block provision, so we didn't lose that critical piece on economic/racial exclusion.
- Kol: The premise here is that under any condition, we will get so little middle housing built. There is no regulation that can induce a lot of middle housing development. Outside of Portland, if we could get 100 units of middle housing built, would this conversation be necessary? It would not. There is not going to be significant development of these housing types. Could we instead consider a public process to exclude additional lands based on clear and objective rationale? What we don't have are very clear rationale, just old perceptions of what housing should look like. An alternative pathway to consider is to see whether we could revisit this conversation in a few years when we have a clear understanding of what lands should be excluded.
 - Staff: The first approach is almost exactly the same as the "whittle away" with the "third lever".

- Palmer: I've seen checkpoints placed into rule. It wouldn't surprise me if DLCD places into rule coming back at a certain date with a report and recommendations around changes.
- Hallova: The things that make this difficult for me are the technical elements like setbacks that compile and result in prohibitions. There will be all of these barriers that make it difficult for these types to be built. In the City of Portland, they're requiring water meters for multiple units. On a two or three unit project, a separate water meter is a huge cost or delay to middle housing. There are going to be all these barriers coming up left and right, and we should limit our creation of barriers.
- Peggy: Using the Allan Blvd example, my concern with the larger percentages relates to the places where we are most likely to be successful are in the areas most likely to gentrify. It's why I am concerned about the high percentages. I am going to slightly disagree with the 100-year issue. In the 80s, Washington County slowly but surely changed rules and regulations to allow more housing. What can be done in the rules is require DLCD to provide a report to the Commission after a certain length of time.
- Hallova: With any new development, you have the possibility of gentrification. There are other tools that could be implemented to prevent that. We should not use gentrification as an excuse to limit supply. For example, in SF projects cannot be passed because of the argument of gentrification.
- Martha: I appreciate the attempt at flexibility. Clackamas Co has advocated for additional flexibility. I appreciated Mark's explanation of different lot configurations, and I also appreciate there are a lot of jurisdictions with fewer than 70% of lots at fewer than 7000 SF. The actual percentages here don't provide that flexibility. I wonder if there's a two-pronged way – one is reducing the percentages. Another is looking at the front end, the only two things you can use to whittle away are minimum lot size or maximum density. Maybe there are a few other things we could look at up front that are clear and objective that give a jurisdiction more flexibility to allow middle housing. What we are going to run into is that we meet a metric but are in a location that won't realistically develop. Maybe there's another way we can configure this to meet the percentages.
- Colin: We do support the flexibility built in the proposed rules. We agree that these may be too high. We recognize that developers need certain flexibility, but we also want our communities to have unique character. We can sometimes work this out with some areas, but less so with others. Some of our naturally occurring affordable housing are small, older units, and there will be displacement as a result of that.
- Jerry: This was a terrific discussion. I am good with the percentages and rules once I understand how they work. A walk through or introduction would be helpful.
- Hallova: This is a great discussion. I agree that the chart that shows the options will be helpful. I am also fine with the percentages – I would want higher, personally. I understand why townhouses and cottage clusters have a smaller percentage, given that they require a larger percentage of land. Thank you for the comments on the 100-year issue; this has been very pressing for me to ensure we are explicit about addressing a racist past.

Rulemaking Advisory Committee #9
Zoom-only Meeting
August 18, 2020

Key Insight Summary

Housing Production Strategy Final Rule Provision – RAC members provided specific feedback on provisions in the draft amendments to OAR Chapter 660, Division 008 outlining the specific requirements of Housing Production Strategies. These include questions regarding specific definitions and measuring disproportionate housing need, what parties are engaged during an HPS, and how questions in the Fair and Equitable Housing Outcomes section will meaningfully advance equity. Several RAC members raised the need for specific “metrics” to determine whether a city is in compliance with the requirements for a Housing Production Strategy. Staff noted that the intent behind the rule language is to avoid holding jurisdictions to a set “number” or “metric” of unit production, and rather, evaluate a city’s response to holistically meeting its identified housing needs. Finally, RAC members raised concern about the potential for enforcement and compliance provisions to fail to meaningfully hold local jurisdictions accountable for making good-faith efforts to comprehensively addressing housing need.

Large and Metro Cities Minimum Compliance Provisions – RAC members offered feedback on various provisions of the draft administrative rules to clarify the intent behind various provisions and offer suggestions to increase clarity and consistency. Policy recommendations included:

- Provide an option for local jurisdictions to apply design criteria more restrictive than the model code without requiring intensive analysis.
- Ensure cottage cluster provisions are clear and consistent.
- Ensure that the provision regarding Master Planned communities thoroughly meets the intent of House Bill 2001 while providing planning discretion to local jurisdictions.
- Ensure provisions encourage and incentivize the development of fee-simple ownership housing units

Performance Metric Approach – DLCDC staff convened a meeting with LOC and various local jurisdictions on August 12th, where representatives raised the need for clear standards that reduce ambiguity for local jurisdictions in developing middle housing provisions. To respond to this, DLCDC staff developed a refined proposal to send to RAC members on August 14th that outlined a performance metric-based approach jurisdictions could use to regulate middle housing in areas that allow single-family detached dwellings. Many RAC members who were not present at the meeting on the 12th felt that the proposal was sent with too little time for review to speak to the adequacy of the policy proposal. It is clear that any performance metric approach, if presented to the Commission, will require additional conversation with stakeholders other than local jurisdictions to establish reasonable requirements that hold jurisdictions accountable and ensure more equitable housing outcomes.

Cottage Cluster Large Cities Model Code – RAC members offered final feedback on provisions of the Model Code applicable to Cottage Clusters. In general, there is agreement among RAC members that the provisions of this section should require as much development flexibility as practical to ensure the feasibility of these housing types. Additionally, there are questions about the minimum amount of land needed to produce these housing types.

Attendees:

RAC Members:

- Alison McIntosh
- Amanda Ferguson
- Brian Martin
- Colin Cooper
- Chris Pryor
- Chris Storey
- Debbie Aiona
- Derrick Tokos
- Drew Farmer
- Ed Sullivan
- Ellen Miller
- Jacen Greene
- Jeannine Rustad
- Jeff Blaine
- Joel Madsen
- Kelsey Zlevor
- Kimberli Fitzgerald
- Kol Peterson
- LaQuida Landford
- Lynne McConnell
- Mark Rust
- Martha Fritzie
- Mary Kyle McCurdy
- Peggy Lynch
- Sarah Adams-Schoen
- Shannon Vilhauer
- Stephanie Jennings
- Ted Reid
- Theresa Cherniak
- Tim Morris

Public:

- Anne Kelly
- Ariel Nelson
- Erik Olson
- Jason Yaich
- John Schmidt
- Kim Armstrong (Washington County)
- Laura Kelly (Hillsboro)
- Lauren (Sommers - City of Eugene)
- Mary Piper
- Nancy Donovan
- Pauline Hardie (City of Bend)
- Sophie McGinley

Staff/LCDC:

- Casaria Taylor
- Emma Land
- Ethan Stuckmayer
- Gordon Howard
- Jerry Lidz
- Kevin Young
- Robert Mansolillo
- Samuel Garcia
- Sean Edging

Meeting Notes

Discussion of adopted rules and timeline for rulemaking after the RAC meeting.

- Peggy – TAC meetings scheduled in October that the RAC can join. Is there an expectation that work will be done then?
 - Staff: The LCDC meeting is Sept 24-25. The rules under consideration are those we are working on today. LCDC will hold open the hearing until Nov 19-20.

Housing Production Strategy

Update on Housing Capacity Analysis Deadline and Housing Production Strategy requirements, including draft rule language – OAR Chapter 660, Division 008.

Contextualized Housing Need

- Peggy - League sent comments that didn't make it to the RAC. Please refer to page number rather than OAR subsection.
 - Staff – We have received several public comments since the last addendum. We will send this out.
- Lynne – Two thoughts 1) Around homeless options, we will all intend to do our best, but I think City of Bend would appreciate more clarity on what is sufficient. 2) I do appreciate have all of the different data sources and wonder if we can create a catchall for people with disabilities.
 - Staff – We know the data quality is going to vary and we can't hold all cities to the same standard. That's why we specify specific data sources as available to establish a baseline. Cities can build on that to develop better estimates.

Engagement

- Peggy – On page 48, there's a list of people who should be engaged. Commercial and industrial property owners pay taxes. I would like to see a responsibility for local governments to engage taxpayers. Is there a statutory definition of "in writing" – can this be electronic or by postal service?

Strategies to Meet Future Need

Fair and Equitable Housing Outcomes

- Mark – Mention "gentrification" and mention it's defined. I don't see it defined in line. In the memo, it includes in line definitions.
 - Staff – The real sticking point is the "displacement", so we wanted to be clear it was both economic and physical definition of displacement.
 - Mark – If it's economic "and" physical vs economic "or" physical
 - Staff – Yes, we want cities to consider both, so the "and" is appropriate there
- Mary Kyle – On strategies, we are still failing to have a metric and review of the locational aspects of housing within a community. HB 2001 and 2003 were about opening up areas to more diverse and affordable housing types. I provided reference to the requirements already in a governing document that was adopted by ODOT regarding the percentage of households located in mixed use, compact neighborhoods to meet climate change goals. We are lacking a locational element. In sub 4a (pg 49), cities change from "while creating" to "by creating mixed-use, walkable..." Numbers are important but we can't continue to segregate housing by race and affordability.
 - Sarah - I strongly support Mary Kyle's point about location. The intent of the law is to increase housing choice in SF neighborhoods.
 - Staff – Issue of illegal delegation of authority and setting a specific threshold in these elements, which are not intended to be too prescriptive as they apply statewide.
 - Mary Kyle – The elements under 4 are well and good but they are not reflected under metrics. You are going to review city progress, but you will not have specific measures to judge them against. Additionally, referencing the benchmark in ODOT is not an illegal delegation of authority. I see a lack of things in sub 4 that specify how they are achieving

these – how would you make a determination. It's not difficult to make a metric for affordable housing in mixed-use, walkable areas.

- Mark – Agree, in general. The need for clarity on metrics is important. On sub 3, with how DLCD evaluates the mid-point report is important.
- Peggy - "Housing Choice" is the term used for federal Section 8 voucher program. Problem not unlike the "opportunity" issue?
- Joel - I like the 'or other' data set addition to the section 1(h). pg 47
- Mark - supportive of the changes to (e). Like the changes to support homeownership as well as rental.

HPS Reporting and Mid-Term Reporting

- Mark - The number 9 change is a good addition. I would go further, but I think identifying strategies that are or are not working would be more important. Ultimately, I think it will be a finite number of strategies that ultimately work. Number 3 could be more specific in terms of metric.
- Lynne – I would encourage this not to just be a look back but a reflection over time. Sometimes it takes as long as five years to see results of policy changes. Ensuring the time frame looking back continues and can capture progress from policies long past.
- Mark – One of our staff members is on the TAC. OAR 660-008-0060. In (5), it points back to 0055(3) which are the criteria to meet in the initial report. It just seems odd to me that there aren't specific metrics. It's not clear what is being asked for. In the TAC notes, she asked some questions and staff response talks a bit about it. I want to ensure it's clear in the OAR what the intent is.
 - Staff – The intent of the mid-term is a “check in” or progress report on how the HPS is being implemented, are they adopting strategies on the schedule they make. These need to be tied to the underlying plan. We still need to take these elements into consideration.
 - Mark – What you explained, but when you say you are going to look at the criteria it was originally based on. The concern is the criteria aren't really criteria. These aren't metrics that you can look at objectively.
 - Staff – One thing we have held constant is that we are not interested in tying HPS to the number of units produced and having a produced unit target. Rather, it's a holistic look at what a City is doing to meet the 20-year housing need. It's looking into ensuring they are making a good faith effort to address, recognizing that they are one player in a much larger market dynamic.
 - Mark – There's no way to know if we are going to be meeting requirements through this.
 - Staff – Enforcement outlines that the department will be looking for good-faith efforts in participating, and enforcement flows from there.
 - Mark – There was question about having an oversight committee. The cities required to produce these reports and then it's the Department's role to determine if we are fulfilling that obligation. The question at the end of pg 38, having a third advisory committee providing oversight – I don't know how this plays in with it.

Enforcement and Compliance

- Mary Kyle – Agree with the unease surrounding subjective elements. This leads to uncertainty about what is expected. On compliance, I appreciate the discussion about trying to come up with deadlines. As a result of HB 2001 and 2003, Oregonians are expecting that these (HPS and HNA) will be done, but we need language that isn't "may" but "shall". The enforcement order is a big step to take, but there is nothing to build up to it. These elements will need an overall timeline, otherwise you will reach the end of the period and nothing happen. I think if deadlines are failed to be met, cities "must" agree to remediation actions. This language just seems weak. It seems there's one large hammer at the end.
 - Staff – The enforcement tools that DLCDC have at its disposal are somewhat limited. Participation in the HPS program is a priority for the Department. There must be an underlying understanding that there are escalating consequences for failure.
 - Mary Kyle – The key problem is the word "may".
 - Staff – The "will, must, may" gets tricky when you are uncertain about the circumstances.
 - Mary Kyle – The timeline may take into account various contingencies, but requiring the formulation of deadlines is important.
 - Peggy - Mediation costs money. If the "may" becomes "must" then someone has to pay. If changed, then the HPS fiscal needs to address....cost to DLCDC
 - Shannon – I wonder if an alternative approach to the soft language to allow for consequences would be to use standard contract language outlining consequences. The Department, at their discretion, may loosen enforcement standards, but it will provide clarity.
 - Shannon (Zoom chat) - Regarding HPS enforcement, I wonder if an alternative approach might be to list out a series of mitigating circumstances--as would be typical in any contract for services--for example, that could trigger an adjustment to regular enforcement.
 - Jerry - "within" 20 days needs clarification.
 - LaQuida - We will need a strong accountability process.

HPS Fiscal and Housing Impact Statement (FIS/HIS)

- Joel – I see a potential impact if the result is additional housing for people experiencing houselessness, there will be a savings in the public system. Taking a positive lens of the hopefulness of this rule is an impact that should be further explored.
- Peggy – The big thing is the estimated cost to DLCDC in staff time and dollars needs clarification, because in the 2021 session, in order to implement, it's going to cost money. We need to document this.
 - Peggy - So LWVOR sent notes to Ethan on fiscal. This discussion just had means DLCDC has expenses related to annual summary and now, if adopted, mediation. Somehow, the costs to DLCDC need to be reflected in document.

Large and Metro Cities Model Code and Administrative Rule

Update on the proposed provisions of the administrative rules, especially regarding “in areas”.
Discussion of the alternative approach developed in response to the meeting with LOC and cities.

- Mark – Concerned about the definition for “Triplex” and “Quadplex”. The second sentence does not seem to be appropriate with the definition.
- Hope – I saw a mid-century existing home that was situated such that you could add three units to the 10,000 SF lot. It made me wonder about folks who want to add for infill reasons, is there flexibility with the 900 SF provision.
- Theresa – I agree with mark on definitions. “Master Planned Community”, how did you come to that definition. Seems odd that it is just an acre size rather than a requirement that it’s been master planned.
- Colin – On “Master Planned Community”, on the approach that we are pleased with, request for more detail.
 - Gordon – I think the intent was that areas such as South Hillsboro, larger than 20 acres and are master planned and meet certain standards would be allowed to go forward from the master plan. Existing planned communities, for the unbuilt portions, could continue as planned if they met certain density and housing mix requirements.
 - Colin – For example, a new master planned community would be subject to these standards?
 - Staff – Correct. The 20 acre threshold is open for discussion, recognizing there needs to be some line where it qualifies as infill.
- Jerry - Could we add a definition of “site area”, which is a key term in FAR calculation?
- Jerry - On Cottage Cluster applicability section on page 147, I find A and B confusing. Is city required to allow at least 5 or 8 units?
- Ted - Minor point regarding PUDs: cities in the Metro area don't have their own UGBs as implied by the draft language. Instead, we have a regional UGB?
- Mark – I appreciate the clarity. I had concern about the total application of the Model Code. Hopefully, the full rules will be checked before sending off.
- Theresa – Will 35 days be enough time to complete a review of Middle Housing code. Also, how would you make a decision for a time extension?
 - Staff – Mid-May of 2022 will be a very busy time at the Department. Thankfully, we have resources for technical assistance and a relationship with the Department staff, including regional representatives, to check in throughout the code development process. We are hoping that this will be a constant contact rather than getting all notices at once. In the future, amendments will be on a rolling basis.
- Colin – Question about townhouses and cottage cluster provisions regarding when a city is proposing alternative design standards, if we can do something beyond the Model Code, it doesn’t require intensive analysis.
 - Staff – Discussion of conversation with Laura Kelly and incorporating alternative pathways for local jurisdictions developing middle housing design criteria that are more restrictive than the Model Code.
 - Colin – It’s important to show local character of design. We will continue working on that issue.

- Mary Kyle – 0205 and Master Planned communities. I am confused based on the discussion on the definition and what I heard staff say. These criteria seem to apply to existing Master Planned communities. It seems this is a big issue. Regardless, why are we treating Master Planned communities differently. I am concerned that the provision still allows triplex and greater units to be segregated from single-family development, which I assume is the point of master planned communities. This seems to be in conflict with HB 2001. Depending where this provision applies, it would encourage all future subdivisions to be Master Planned communities to ensure continued segregation of housing types.
 - Staff – This came from discussions with Wilsonville, where they indicated Villebois has achieved high residential development and housing mix and Frog Pong, which is new, which would not qualify unless the City increased residential density until it qualified. This would not apply to portions of Villebois that are already developed – i.e. they could convert an existing SFD to a triplex.
 - Mary Kyle – If I understand the definition of a Master Planned community, both of the cited examples are already in the UGB. I can understand letting something partially developed continue to develop, but that is different than an area already within a UGB.
 - Staff – Agreed. The definition will need reworking. The standard allows for grandfathering of existing master planned and develop standards to allow for future master planning.
 - Mary Kyle – Is it just grandfathering, new UGB areas, or new areas inside a UGB? Primarily, that it would allow segregation of housing types.
- Ellen – HBA will be submitting a detailed letter on development and design guidelines on cottage clusters. We will submit a lot of detail, so I won't respond to everything, but I want to start with the definition. We are working to make these homeownership products, so additional requirements places burden on the development of these housing types. The idea of predetermining the orientation of these clusters precludes creative ways of developing these housing types.
- Sarah – Looking through RAC materials on Master Planned Communities. I want to echo some of these concerns. If this is just grandfathering, there can be some limited grandfathering, but the bill specifically lays out exceptions, which clearly does not include master planned communities. I also want to point out that unless there's a different definition, the act prohibits planned community development documents from prohibiting housing types otherwise allowed. I think it would go against the intent of the bill if not its express language.
 - Staff – I think you are bringing up a policy decision which is whether and how we interpret "in areas". We've heard from local governments that "in areas" is not every lot or parcel and they should have some discretion to decide where housing goes. Simultaneously, the intent of this bill is these housing types should be allowed widely throughout.
- Colin – To reiterate, the flexibility that the Master Planned community provides is important for communities that have worked to incorporate a mix of housing types in their planning efforts. These are hard to do, and I want to ensure they don't get harder to do.
- Mary Kyle – While the Bill uses "in areas", the way I read the planned unit development would allow areas to excludes housing types beyond duplexes rather than allowing it somewhere

within those communities. I don't know why we should allow that because it's been planned. The bill attempts to break down segregation through housing by race and class.

- Theresa – on lot sizes for plexes, I am wondering. This ends up equating to a density of 25 to 26 units per acres, which would be quite a large leap from what current densities allow.
- Ellen – Because we want to provide as much possibility for development of these as homeownership products. I would consider allowing individual units are on individual lots and provide fee-simple homeownership opportunity. I would like RAC feedback; there were questions and concerns about the average minimum lot size for townhouses. I would like to see RAC feedback and whether we should take a similar approach for cottage clusters.
- Peggy – I do have support for the idea. We believe strongly that allowing opportunities for more people to own homes is an important equity goal.
- LaQuida – When I look at the cottage cluster standards, my family is from South America and I think about village concepts and think about the possibility for homeownership in the future. I think about the amount of space in Gresham and throughout the state. I think about a thriving vision of shared community ownership and a space for families to grow and live in these environments with each other. We are speaking to homelessness and displacement today, if we can prevent these future outcomes and get this information to CoC for visioning would be amazing. I call them “cultural clusters”.
 - LaQuida - 'Cultural Custer' it would benefit future homeowner of first generation wealth creation
- Shannon – Is there an opportunity/need for new legislation based on the ADU legislation in CA to mandate by right partitioning to build these types of homes. It's wonderful we can increase the density, but we have to have some way to divvy up the land to provide maximum homeownership for occupants of those homes. From what I understand, that admirable goal is outside the scope of the legislation so far.
 - Shannon - To comment on this large cities topic, I think that a larger question is being raised about the need for companion legislation to HB 2001/2003 regarding lot partitions to match allowable construction.
- Jerry - why four units per acre for cottage clusters? that's about 10,000 square feet each!

Performance Metric Approach

- Ellen – My first reaction was that there were a lot of policy decisions made in this proposal. We discussed this in prior meetings and the ambiguity of the percentages was why we veered from that option. I had several conversations to try and understand. One concern I have is the 20% where the City does not allow it, the City still has to justify why they do not allow it. I would like to hear from cities as to why justifying that 20% less onerous than the previous concept. We knew cities were going to have some discretion and there would be some percentage. I don't understand why it's easier to do a 20% and justify that vs whatever the percentage would turn out in the previous proposal. I don't understand how this is a better option.
 - Staff – If a city showed that did allow triplexes on at least 80% of lots, they would not need to provide a justification for the number other than providing analysis that they are not reinforcing segregation. There would not be a lot of subjectivity here.

- Mark – I wasn't aware that there was a justification for not allowing. Gordon cleared that up. That is the reason why this becomes appealing is that you don't have to justify under a subjective process. I am also glad to hear this includes analysis.
- Staff – There is still a policy question as to whether these are the right percentages.
- Mark – I will have more to say on the percentages, specifically on cottage clusters.
- Ellen – Understanding that, I don't know that we agree with these percentages and how we come up with correct percentages will be a big challenge.
- Peggy - With these new proposals around "areas", I assume you will be getting another document out BEFORE you send to SOS on Sept. 1st. Am very concerned if major changes happen w/out SOS notice.
- Jerry - Very creative concept! Deserves more discussion.
- Kol – I am only starting to wrap my head around this proposal. I am not supportive of this; this seems to have come from disproportionate representation of planning staff from local jurisdictions; this last minute proposal would be laughed out of the room. This seems unsuitable given the purpose of House Bill 2001. We can tell from the feasibility studies that very little middle housing will be built. This is a pointless thing to throw into the mix that complicates matters. This will also be confusing, even for experts and DLCD to administer.
- Mary Kyle – There are things I certainly do not like about alternative standards. I just want to echo that it is difficult to process this given the limited time for review. There is no way I am ready to say anything about this today. I want to clarify on these percentages – these only come into effect after goal-protected, infrastructure constrained, master planned, etc. lands. I think it is critical that if we go down this path, we need to look at how this plays out. What is allowed is not going to be much after deductions, plus the equity metrics would be critical.
- Colin – Kudos to DLCD staff for trying to find flexible approaches. I'm not sure Hillsboro will use this approach, given that we are producing a lot of middle housing. I think it's appropriate to allow flexibility; the bill specifies local flexibility to reflect local character.
- Ed – I have some concerns. I will start with that a meeting was held with only one interest group. The proposal did not come with packets and came late in mid-August at the last meeting. It made it difficult for housing advocates to get together and make a coherent response. There were also six other memos that were completed by other cities. I have concerns that this is a watering down of the legislative mandate given to us by the legislature and continuation of segregation. I have concern that this proposal allows decorative change at the margin instead of fundamentally meeting people's needs. We have explicitly allowed segregation by race and continued this through low density, exclusive zoning. We know that neighborhoods and schools govern success – unless we change this now, we are condemned to continued this “gentile” form of racism and segregation, in which white communities segregate themselves from black and brown communities. Giving cities the power to discriminate will allow discrimination to continue – this will continue justifying de facto segregation. Let's free ourselves from historic patterns of racism and allow for vibrant, integrated neighborhoods. Absent narrow circumstances, middle housing must be allowed in all areas.
- Mark – From a City's perspective, I think allowing middle housing on 80% of lots is a big step forward and in line with House Bill 2001. We have talked about what “in areas” means for months, and I don't think this a last minute subversion as it's been raised previously. The discussion has been had at the end of this process and one of the more difficult discussions. I

think this is a good approach. Gordon mentioned providing numbers to compare this approach with the safe harbor (minimum lot size requirements). Are these numbers at the outset, or do we have to maintain these over time? On cottage clusters, because they are one of the most difficult to produce, a cottage cluster development will not “fit” on every lot, and probably won’t fit on lots under 7,000 SF. If that 50% number holds true, it should be 50% of lots above 7,000 square feet.

- Peggy – I have been trying to absorb the discussions. I do have problems with this coming at the last minute, given that Sept 1 is the deadline. “In areas” is deliberate in the legislation, which is how the legislation got passed. Without this flexibility, it would not have been passed, and we are making huge strides. I do not accept “in all areas” discussion. Mark’s comment I thought was really interesting. How do you protect that the entire lot is not covered with impervious surface. Perhaps there should be two choices, one for the percentage or the alternate choice.
- LaQuida - We must think outside of the box
- Sarah - I don’t want to take time speaking on this, but it is important to meet again after being able to review the materials that came out on Friday afternoon. We’ve been talking about in areas for a long time, but haven’t reviewed the proposal. Individual comments on it won’t allow for a full RAC review of the proposal that we would get from talking again as a group.
- Mary Kyle – It’s unclear how we will be able to give feedback after this meeting. My main comment is I don’t know how this plays out. Parcel level sounds very complex. And what does this look like on the Census block level if 50% of lots allow. I have no idea as to what kind of impact this might have.
- Peggy - Assessed Values differ from Market Value. Both are mentioned in this Equity Metric

Large Cities Model Code

- Lynne – On page 150, 4f. unit size for cottages says that unit size cannot include the garage or carport. We advocate for not counting garages in the footprint. Finally, appreciate the flexibility on footprint being 900 SF rather than overall size. One flexibility is the ability to create a duplex within one cottage.
 - Staff – This was to respond to a comment from Mark in the MCTAC meeting. We will ensure these are consistent between documents
- Mark – My main question is about density and lot size, and I believe cottage clusters should have the greatest flexibility practical. Of course, when the lot size is the same as a single-family detached dwelling makes a tricky issue on small lot sizes. If it takes 6000 SF at a minimum to do a cottage cluster, is this really allowed.
- Jerry - Re number of units in cottage cluster: Yes to Option 3. Max floor area: try 1450 SF (2d story half size of first floor). We need schematic illustrations for cottage clusters like those for triplexes and quads, including parking options. We might want to think about min. Lot size for cottage clusters. Here’s a hypothetical analysis of 3 units on 7,000 sq. ft (70’ x 100’):

Courtyard - 400/ unit = 1,200 (may be smaller)
Buildings - 900/ unit = 2,700 (may be smaller)
Parking - 1/unit = 600 (may be smaller)
Setbacks = 2,200

Total land area = 6,700, and this is without consideration of pedestrian connection requirements - it gets pretty tight for three units!

- Ellen – On courtyard design standards, these are unnecessary standards. Suggesting what the orientation to be, we find to be too much regulation which will prevent potential layouts that may be necessary for a multitude of reasons. I want to respond to Mark’s comment. I want to thank Bend and Springfield around the work on increasing housing types. Developers point to your cities as good practices and feel comfortable with code updates. I want to say in regard to Mark’s comment on density/minimum lot size, I would ask DLCD staff to write rules in a way that does not disincentivizes them from reducing minimum lot size standards for single-family detached dwellings. We applaud Springfield and Bend for looking into these options.
- Colin – If I have a proposal in my community and I have a three cottage cluster and the developer wants to build 1000 SF footprints and don’t want to build a courtyard and divide the lot. Do I have to fit into the option of the Model Code?
 - Staff – In a scenario with 1000 SF cottage, the legislature defines it as no more than 900 SF. The option available is to define that as another housing type (e.g. a triplex). This is an alternative that we can’t touch, and we may need to make this more explicit in rule.
 - Colin – The charm is the diversity of housing. Going from a small 900 to a 1200 or 1400 is important. Maybe this is a tweak in the law to allow for a little more flexibility.

Large City Model Code and Administrative Rule FIS/HIS

Feedback to be submitted in writing.

Next Steps

Timeline for rulemaking and opportunities for additional feedback

HOUSING RULEMAKING ADVISORY COMMITTEE



JOINT RAC AND MCTAC MEETING PACKET

UPDATED OCTOBER 5, 2020

TO: Housing Rulemaking Advisory Committee and Middle Housing Model Code Technical Advisory Committee Members

FROM: Ethan Stuckmayer, Senior Housing Planner; Robert Mansolillo, Housing Planner; Sean Edging, Housing Policy Analyst

SUBJECT: Refining Middle Housing Rules

Housing Rulemaking Advisory Committee and Middle Housing Model Code Technical Advisory Committee Members,

The purpose of this memorandum is to describe comments the department have received on various aspects of the Large and Metro Cities Middle Housing rules. It also summarizes refinements the department has made to OAR 660-046 as a result of Land Conservation and Development Commission (LCDC or Commission) discussion during their meeting on September 25. Refinements were also made based on the continued written and verbal testimony presented to LCDC and Department staff by RAC and MCTAC members as well as the general public.

This memorandum is intended to be used in tandem with the associated Oregon Administrative Rules and Model Code packet items. This memorandum will explain the suggestions and comments Department staff has received since the last Model Code Technical Advisory Committee Meeting on August 4 and the last Rulemaking Advisory Committee meeting on August 18. Specific changes to the Oregon Administrative Rules and applicable commentary are made in track changes in Packet Item #6 "OAR 660-046 Redlines". A brief description of the changes Angelo Planning Group will make to the Model Code is provided as Packet Item #5.

Technical Fixes to Model Code

Department staff has received fewer public comments and testimony related to the Large and Metro Cities Model Code than the rest of Division 46. Comments received were mostly related to a need for further clarity of standards or minor adjustments to how the standards operate. Staff received written letters on the model code from the City of Portland and the Oregon Homebuilders Association. Department staff is working with the consultant team at Angelo Planning Group to incorporate specific changes to the model code as a result of these comments. Angelo Planning Group has drafted a memo explaining changes and proposed concepts for RAC and MCTAC consideration as part of Packet Item #5.

Technical Fixes to Division 46

Department staff received a substantial amount of comments related to the minimum compliance standards, definitions, and applicability of the proposed rules in OAR 660-046. Over 30 letters were submitted and over a

dozen stakeholders provided verbal testimony during LCDC's first public hearing of the proposed rules on September 25.

Department staff have been working to incorporate all of these comments into the refined set of rules provided in this packet. In review of the OAR 660-046 Redlines Packet Item you will notice that department staff attempted to address each comment received either through an actual change to the rules or a description of why a change was not made. You can identify these items by the commentary included in the margins of that document.

In review of the comments and feedback received, the bulk are related to specific policy decisions or concepts in Division 46. Discussion on policy decisions are described in more detail in subsequent sections of the memorandum. However, many commenters provided specific wordsmithing or editorial fixes to the rules to provide additional clarity and correct inconsistencies. These suggestions are much appreciated and have, in large part, been incorporated into the refined OARs.

The following sections will describe in more detail some of the policy discussions department staff and LCDC have heard recently.

Discussion of "in areas"

The majority of comments the department received were related to how the proposed OARs address the applicability of HB 2001. As the RAC and the MCTAC are aware, there are several overlapping and interrelated sections of the OARs that address the question of how "in areas" is defined. Below is an explanation of how staff proposes to address the comments in each of these sections.

Goal Protections

Several edits have been made to OAR 660-046-0010(3) to reflect conversations with various goal experts. Revisions include the following:

- **Goal 5 Natural Resources:** These revisions reflect discussions with DLCD's Goal 5 Natural Resource expert. It is intended to prevent additional development pressure near sensitive natural resources. It also includes a backstop for jurisdictions that do not have Goal 5 protections, because the regulatory mechanism that ensured jurisdictions apply Goal 5 protection (Periodic Review) is now defunct.
- **Goal 6 Air, Water, and Land Quality:** This revision is intended to better reflect the responsibility local jurisdictions have to fulfill federal and state air, water, and land quality laws and regulations.
- **Goal 9 Economic Development:** Staff from the City of Portland raised the need for a narrow exemption to limit Middle Housing development on lands that are zoned for single-family detached residential use but designated for future industrial/employment uses, as redevelopment with Middle Housing would be in conflict with the area's intended future use and comprehensive plan designation.
- **Goal 15 Willamette Greenway:** This section is pending revision. The primary conflict staff is trying to work through is the apparent conflict with Willamette Greenway provisions and clear and objective statute requirements (ORS 197.307). Staff is working to develop a path that allows Middle Housing development adjacent to the Willamette Greenway while meeting the provisions of the goal and in compliance with ORS 197.307.

Staff would also like to clarify a major point on how Goal Protected Lands interact with higher Middle Housing requirements. It is important to recognize that goal protections do not constitute *full exemptions* from higher Middle Housing requirements. Rather, the proposed OARs are drafted such that local governments can maintain the right to regulate higher Middle Housing in goal areas in conjunction with existing goal protections as provided

in OAR 660-046-0010. While certain goals, including Goal 5 Natural Resources, Goal 6, Goal 7, Goal 9, and Coastal Goals allow reasonable limitations on Middle Housing development, Goal 15 provides a path to allow Middle Housing (and count lands towards compliance). Additionally, Goal 5 Historic Resources *do not* allow for the full preclusion of higher Middle Housing types because of use.

The provision in Goal 5 Historic Resources is particularly important to prevent the misuse of historic district designations by neighborhoods that seek to entrench patterns of exclusion. Historic Preservation experts (Kim Fitzgerald, SHPO staff, Carrie Richter, and others) indicated that standards related to use and the number of dwelling units do not relate to the historic integrity of a structure. Rather, standards related to the façade, form, and design of structures and districts are the elements that relate to historic integrity. While historic resources/districts may not outright exclude Middle Housing uses, local governments will still be able to apply to Middle Housing the same procedural, form, and design standards as they apply to other structures to ensure historic integrity of a resource/district is maintained.

Infrastructure-constrained lands

The existing definition for an “infrastructure constraint” is as follows:

OAR 660-046-0020 Definitions (from proposed “large city” rules)

7. “Infrastructure Constrained Lands” means lands where it is not feasible to provide acceptable water, sewer, storm drainage, or transportation services to serve new Triplexes, Quadplexes, Townhouses, or Cottage Cluster development; where the local government is not able to correct the infrastructure limitation by utilizing the process outlined in OAR 660-046-0300 through OAR 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.

Concerns have been expressed that the definition includes subjective language that makes it difficult for a local government to know how to demonstrate that an area is subject to an infrastructure constraint where triplexes, quadplexes, townhomes, and cottage clusters will not be allowed. It is true that the definition includes a number of subjective terms that will have to be evaluated by the department, such as “what is feasible?” and “what are limitations that a local government cannot correct?” However, it is impossible to anticipate all the factors that may contribute to an infrastructure constraint, and very challenging to develop clear and objective standards that would be appropriate for all affected cities. What may be financially feasible for Portland will not be feasible for Tualatin. Circumstances will vary widely between cities regarding their infrastructure systems. Because of this, the burden of proof will necessarily be on the local government to demonstrate that the infrastructure constraint is a limitation that could not be addressed through the IBTER process, nor by improvements that would be required in conjunction with middle housing development. It will not be sufficient for a local government to claim an infrastructure constrained area without producing findings demonstrating how the infrastructure limitation qualifies as a constraint that cannot be corrected by the local government.

To further clarify these issues, the following amended language has been added to the infrastructure constrained lands portion of OAR 660-046-0205 (additional language is underlined):

2. A Large City must allow for the development of Triplexes, Quadplexes, Townhouses, 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 regulate or limit development of these types of Middle Housing on the following types of lands:

[...]

- a. *Infrastructure Constrained Lands: Large Cities may limit the development of Middle Housing other than Duplexes on Infrastructure Constrained Lands. In order to demonstrate that an area is an Infrastructure Constrained Land, the Large City must adopt findings in conjunction with the adoption of required Middle Housing allowances that demonstrate that the infrastructure limitation is consistent with the definition provided in OAR 660-046-0020, could not be addressed through the process provided OAR 660-046-0300, and could not be addressed with required improvements that would be expected with Middle Housing development. The Large City may not consider an area to be infrastructure constrained based on any lack of improvements beyond those listed in OAR 660-046-0340.*

Master Planned Communities

The Commission received public comments on how the draft rules address “master planned communities.” Department staff offers the following responses to the issues raised:

None of the comments received included any objections to providing some sort of exemption for the initial buildout of existing master planned communities. However some commenters recommended eliminating the provisions related to new master-planned communities, arguing that they were unnecessary and continued patterns of exclusion.

The department continues to believe that the administrative rules need a special provision for new master-planned communities. For such communities, which involve large amounts of new development on larger, undeveloped and un-serviced sites, local governments must plan for provision of adequate public facilities, including transportation, utilities, parks, and public services. Local governments need to know the approximate number of new dwelling units built in master planned communities for which they need to provide adequate public facilities. While communities can expect incremental and modest increases in middle housing types in existing neighborhoods, the economics of development are much different for large undeveloped parcels, and could lead to wide variations of up to four times the number of eventual residential units in such areas. Therefore, the department believes that a master plan area provision allowing local governments to set overall dwelling unit numbers is necessary.

Additionally, The rule as written allows local governments to set dwelling unit numbers for master planned communities, but not to specify among single-family detached and middle housing types (a local government could still specify other housing types, such as multi-family or congregate care units). Several commenters requested additional flexibility to specify numbers and locations of different types of middle housing units other than duplexes within master planned communities. The City of Wilsonville gave as a specific example the master-planned community of Villebois, which has detailed plans for different types of dwelling units in different areas, and achieves an overall residential density of 12 dwelling units per net acre, with 44% of the units detached single-family, 12% attached units, and 44% multi-family.

The department believes that Wilsonville’s approach, and that of others, has some merit. However, there is also an important countervailing principle, which is that neighborhoods should not be segregated into different “monocultures” of housing types. As long as a city can enforce total unit number counts in the whole or parts of a master planned area for public facilities purposes, developers and “the market” should determine what specific type of housing (looking at single detached development and various middle housing types) goes into those areas.

The department believes that the rules can allow for a reconciliation between the arguments from Wilsonville and other cities and the principle of allowing middle housing types in as many areas as possible. The draft rule allows cities to set an allowed net density of at least 15 dwelling units per acre. This provision would allow cities, as long as they maintained the overall allowed net density, to allocate residential units to different “subareas” within a master planned community. For example, a 30-acre parcel with 20 net developable acres (after subtraction of

streets, public uses, open space, etc.) proposed for up to 300 dwelling units (15 dwelling units per net acre), could be divided by a city into two subareas, an area with 10 net developable acres (Subarea “A”) with up to 100 proposed units and an area with 10 net developable acres (Subarea “B”) with up to 200 proposed units. A city would not be allowed to specify what kind and number of single-detached and middle housing units could be built in each subarea. However, this development scenario would most likely result in single-family with perhaps some attached units in Subarea “A” and a preponderance of middle housing units in Subarea “B.”

Specific Density Provisions Within Master Planned Communities

The rule as written sets a standard of at least 15 dwelling units per net acre for new Master Planned Communities. The City of Beaverton believes that this figure may be too low, considering that it includes allowances for higher density housing types such as multi-family units.

The department believes that the 15 dwelling unit per net acre standard is appropriate. It is the current standard set by Metro for concept plans in UGB expansion areas. While Beaverton met a higher density standard for its South Cooper Mountain master plan, the survey of other such communities around the state, in Hillsboro, Wilsonville, Medford, Bend, and Redmond, shows net densities somewhat lower than 15 dwelling units per net acre. This standard does not prohibit a city such as Beaverton from approving a master plan with a higher density than 15 dwelling units per net acre.

Gross or Net Density in Master Planned Communities

The rule as written sets a standard based upon “net” residential development density. Density is determined by dividing the number of units by the amount of land on which those units lie. A “net” calculation only considers the actual land that is devoted to development, whereas a calculation of “gross” density would include, at minimum, land devoted to public uses serving the residential development, such as streets, storm drain ponds, parks, schools, etc. – and in some cases perhaps other non-residential development such as retail and office uses. Some commenters reflected a standard based upon “gross” density instead of “net” density. The department believes that using “net” density would be a more accurate way to measure the intensity of actual residential development on residential lots or parcels, because communities vary significantly on how much land they devote to public facilities to serve residential development and other uses.

Defining a Master Planned Community

Some commenters questioned the definition of a “master plan,” adopted by a local government, questioning whether it would include a “concept plan” adopted by resolution, not ordinance, for an area not yet annexed to a city, or whether it would include a “community plan” that is adopted for areas that are already mostly or partially developed and have existing urban services. The department proposes modifications to the definition, shown below, that clarify a “master plan” is a plan that is adopted by ordinance as an amendment to a city’s existing comprehensive plan or land use regulations, and that is for an area that is not currently developed with urban-intensity residential uses.

Limiting Development in Master Planned Communities

The rule as written does not allow cities to prohibit redevelopment of housing in master planned communities with middle housing types once initial development has occurred. Some commenters argue that this will upset the balance of uses and planning with the community. The department’s recommendation is based upon the fact that, once these neighborhoods are initially built, they become like any other neighborhood within the local government, and should not be “preserved in amber” any differently from any other neighborhood. Also of note – it would be highly unusual to expect significant redevelopment of newly developed housing for decades beyond initial development, at which point the initial conditions that led to approval and development of a master planned community would be very different.

One comment notes problems with the draft rule language in that it does not distinguish between housing subject to HB 2001 and other housing types, such as multi-family development and manufactured homes in manufactured home parks. The department proposes revisions (see below) to correct this problem.

In response to these issues, department staff has revised the master planned communities language as follows:

“Master Planned Communities” are defined in OAR 660-046-0020 as follows (*changes are underlined*):

10. “Master Planned Community” means a site that is any one of the following:
 - a. Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary that is zoned for or proposed to be zoned for residential development, and which is not currently developed with urban residential uses, for which a Large City proposes to adopt, by ordinance, a master plan or a plan that functions in the same manner as a master plan;
 - b. Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary for which a Large City adopted, by ordinance, a master plan or a plan that functions in the same manner as a master plan after the site was incorporated into the urban growth boundary; or
 - c. Added to the Large City’s urban growth boundary after January 1, 2021 for which the Large City proposes to adopt, by ordinance, a master plan or a plan that functions in the same manner as a master plan.

OAR 660-046-0205(2)(c) includes the following provisions regarding Master Planned Communities:

- c. *Master Planned Communities: Large Cities may regulate or limit the development of Middle Housing other than Duplexes in Master Planned Communities as follows:*
 - A. *If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan after January 1, 2021, it may not limit the development of any Middle Housing type on lands where single-family detached dwellings are also allowed, but may limit overall net residential density within the master plan area provided that the allowed net residential density is least 15 dwelling units per acre. A Large City may designate areas within the master plan exclusively for other housing types, such as multi-family residential structures of five units or more or manufactured home parks. A Large City may not limit future conversion or redevelopment of already constructed single-family detached or middle housing residential units to any Middle Housing type.*
 - B. *If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan before January 1, 2021, it may limit the development of Middle Housing other than Duplexes provided it authorizes in the entire master plan area a net residential density of at least eight dwelling units per acre and allows all residential units, at minimum, to be detached single-family dwellings or Duplexes. A local government may only apply this restriction to portions of the area not developed as of January 1, 2021, and may not apply this restriction after the initial development of any area of the master plan or a plan that functions in the same manner as a master plan.*

Covenants, Conditions, and Restrictions

Recently, RAC and MCTAC members have asked the department to consider how, and if, Covenants, Conditions, and Restrictions (CC&Rs) should be considered as part of the “in areas” discussion. Housing advocates expressed concerns that the existence of CC&Rs that prohibit Middle Housing types could be severely dilute the effectiveness of the performance metric approach. Housing advocates contend that lots and parcels that have a recorded CC&R that prohibit the development of a Middle Housing types should be excluded from the calculation a local

government conducts to ensure they are meeting the various thresholds set forth in the Performance Metric standards.

Department staff are wary of including such a provision in the proposed OARs due to the private nature of CC&Rs. The department or the State are typically not a party to the contracts recorded between property owners and therefore have little to no authority to influence the effectiveness of the contracts. The Department of Justice has also provided guidance to the department that CC&Rs and other recorded instruments are valid until either action is taken by property owners to invalidate the contract or the contract is in violation of the federal or state Constitution (i.e. covenants that restrict the sale of property to persons based on a protected class characteristic). - Additionally, at this point in time, there is an unknown number of Middle Housing-related CC&Rs enforced by an equally unknown number of Homeowners Associations. Requiring cities to conduct a time and cost intensive title and deed analysis to understand where and how these instruments are enforced within their boundaries is infeasible and unrealistic. As such, the Department does not recommend including any discussion or consideration of existing CC&Rs for the purposes of meeting the Performance Metric standards or determining where higher level Middle Housing may be allowed.

Performance Metric Approach

The Land Conservation and Development Commission heard extensive testimony from stakeholders about the Performance Metric Approach during the public hearing. Generally, the comments could be organized into two categories: 1) a call for additional flexibility and clarity in the process that will allow cities the ability to regulate middle housing within their own context and 2) a description of how processes that provide flexibility for local governments to further regulate middle housing are counter to the intent of HB 2001 and should be removed from the proposed rules. As a reminder, balancing both of these arguments is the underlying basis for department staff's proposed Performance Metric Approach.

Staff and the Commission discussed the Performance Metric Approach during the public hearing. The Commission asked staff to conduct an analysis of the Performance Metric Approach in a few cities to determine if it was workable or if the percentage needed to be modified. The department has begun this analysis but it was not ready to be submitted to the RAC and MCTAC at the time of packet publishing. The Commission generally agreed that the Performance Metric Approach was a workable solution to arguments on both sides. The Commission is sensitive to the concept of providing local governments the opportunity to "right size" middle housing standards while remaining true to the intent of HB 2001 to increase housing options beyond what exists today.

Equitable distribution of Middle Housing

Department staff heard from the Commission that the additional criteria ensuring the equitable distribution of Middle Housing in Census Block groups is a critical aspect of the Performance Metric Approach. While the Commission didn't offer any specific feedback on the existing criteria requiring 75% of lots and parcels in every Census Block Group allowing at least one higher Middle Housing Type, they did hear some comments from stakeholders about the concept.

A letter submitted by a number of signatories including the Fair Housing Council of Oregon, suggested that in order for the distribution of Middle Housing to be truly equitable the underlying analysis should be more grounded in the characters of existing residents in each Census Block group. The approach proposed in this letter included a tiered Performance Metric Approach with varying Middle Housing type allowances based on the percent of white residents, percent of area median income, and poverty rate. This approach specifically addresses racial and

economic segregation in where higher Middle Housing should be allowed. However, this approach is not functional.

The existing framework of the Performance Metric Approach is such that it provides local governments with the flexibility to regulate only *minimum lot size and maximum density*. Any minimum lot size or maximum density standard that a local government applies to triplexes in a zone must apply to all lots with that zoning designation. Because local government aren't able to vary these regulations within a single zoning district, the fluctuations in the allowance percentages across neighborhoods potentially within the same zoning district described in this letter make for an infeasible regulatory environment.

Department staff remains interested in hearing from the RAC and MCTAC about potential tweaks to the equitable distribution of Middle Housing if the proposed criteria isn't sufficient.

Anti-displacement exemption

One key concern that was raised leading up to and during LCDC's hearing on September 25 is the potential for increased Middle Housing development pressure in areas that contain Naturally-Occurring Affordable Housing (NOAH), leading to displacement of existing low-income residents. In part, this concern drives an argument for lower percentage thresholds for Middle Housing in the Performance Metric Approach. Staff does not think this is an appropriate policy response for the following reasons:

1. It is not clear nor certain that a jurisdiction would use lower percentage thresholds to exempt areas vulnerable to displacement.
2. Economic displacement is driven by lack of housing affordability, which is a direct result of housing shortage. Exempting areas from Middle Housing development based on who lives there today is a static solution to a dynamic market of property values and affordability. Using zoning to restrict Middle Housing development in a low-income area is not a viable long-term strategy for the preservation of NOAH and mitigating displacement.
3. The relationship between Middle Housing and displacement is not fully clear. While demolition and replacement of affordable single-family homes with large, market-rate units can certainly drive displacement, conversion of existing single-family homes to Middle Housing may increase the retention of residents as they age and increase NOAH options in an area.

Staff feels that addressing economic and physical displacement directly warrants attention. Various provisions are included in rulemaking for both House Bill 2001 and 2003 to address gentrification and displacement, including:

- A direct requirement to address displacement in Housing Production Strategy Reports
- Middle Housing conversion standards that incentivize the retention of existing homes rather than demolition and replacement
- Allowing jurisdictions to leverage incentives for the purpose of encouraging the retention or development of affordable housing.
- Middle Housing development standards are drafted such they increase the availability of housing options not currently available. The standards emphasize and incentivize smaller, more affordable units that meet the needs of a wide range of households.

Finally, staff understands that anti-displacement and gentrification are of critical importance and are open to discussing how best to address displacement in the administrative rules if the RAC and MCTAC feel the issue is not adequately addressed through the provision above. If needed, staff could develop an approach incorporated into

the minimum compliance criteria that allows a “partial whittle” of areas vulnerable to displacement. Department staff feel that any such approach must include the following:

- A clear metric threshold by which a geography of land (such as a Census block group) is deemed vulnerable.
- Provisions that allow limiting demolition and replacement of existing homes with Middle Housing. These areas would still be required to allow conversions and vacant lot development.
- A connection with the Housing Production Strategy to ensure long term anti-displacement and housing stability strategies are implemented.
- A sunset provision (likely at the HNA or PAPA check-in period for Performance Metric compliance) that removes the restriction when an area no longer meets the vulnerability threshold or after a specified timeframe.

Alternative Siting and Design Standards

Staff has engaged in extensive conversations with stakeholders on how to structure rules to provide options to jurisdictions in applying siting or design standards. Originally, this flexibility was provided in the form of a “third lever” approach, which was intended to offer jurisdictions the ability to limit or apply alternative standards to Middle Housing if there was a compelling reason. Largely, the flexibility on where Middle Housing is allowed or not has been replaced with the “Performance Metric” approach, and the alternative standards section has since been narrowed to focus on siting or design standards exclusively. As such, the alternative standards section does not apply to minimum lot, maximum density, or use standards. There are two methods by which a jurisdiction may justify an alternative siting or design standard.

Existing Alternative Siting or Design Standards

The intent of this standard is to avoid penalizing early adopters of Middle Housing, provided they can meet a threshold of production in the area where a standard or standards are applied. Originally, this provision was constructed only to allow jurisdictions to continue application of standards in areas that demonstrate substantial production. Later, conversations with staff at Hillsboro raised that local jurisdictions had few options to regulate design standards differently than what is provided in the Model Code. To respond to this, staff developed two provisions intended to provide more options applying design standards:

1. OAR 660-046-0225(c) which allows a jurisdiction to apply the same design standards that apply to a single-family detached dwelling in the same zone *except* that applicable standards may not scale by the number of dwelling units. Standards may scale instead with form-based attributes, such as floor area or street-facing façade.
2. OAR 660-046-0235(1)(b) which allows jurisdictions that apply a design standard or standards and achieve substantial production of that Middle Housing type to use that standard in another zone *except* that any numerical standard that scales by dwelling unit (e.g. open space requirement per dwelling unit) scales by the minimum lot size of the zone in which it applies. The intent is to ensure that standards that might work in large lot zones don’t preclude Middle Housing development in small lot zones. Other design standards that scale by form or are non-numeric could be applied without adjustment.

After this addition, other RAC members raised concern that the existing alternative standards criteria could undermine the siting standards outlined in rule, as the 3% production threshold is easily attainable, especially in short timeframes where production can vary dramatically or scenarios where single-family detached development is limited. It became clear that the rule needed to more clearly indicate that *alternative standards may not be applied citywide, only where they currently apply*. The attached rules include this clarification.

New Siting or Design Standards

Originally, this provision comprised the core component of the “third lever” approach. Since the inclusion of the Performance Metric Approach, this standard has been narrowed to only apply to siting or design standards, excluding minimum lot, maximum density, or use standards. The intent is to provide an avenue to apply siting or design standards other than what is provided in OAR 660-046-0220 or 0225 if the jurisdiction can produce a compelling reason that outweighs the totality of cost and delay to housing the standard imposes.

Based on feedback, it is not clear if this standard provides, in part, the flexibility that jurisdictions seek or the high bar for Middle Housing that housing advocates seek. Staff is open to revisiting this provision to further refine or consider removal.

Definitions for siting and design standards

Staff has developed an approach that gives jurisdictions more flexibility in how to apply design standards without causing unreasonable cost or delay. However, a consequence of that flexibility is needing more clarification as what is a “siting” vs a “design” standard, as each is now regulated separately in the rules. The intent is to more clearly delineate how standards will be regulated, especially if they fall outside of the categories of standards identified in rule. Each term is defined briefly and includes examples of what is considered a “siting” or a “design” standard as they exist in the administrative rules and Model Code:

1. *“Design standard” means a standard related to the arrangement, orientation, materials, appearance, articulation, or aesthetic of a dwelling unit or other elements on a site. Design standards include, but are not limited to, standards that regulate entry and dwelling orientation, façade materials and appearance, window coverage, driveway access, parking configuration, pedestrian access, screening, landscaping, and private, open, shared, community, or courtyard spaces.*
2. *“Siting standard” means a standard related to the position, scale, and form of a structure or a standard that makes land suitable for development. Siting standards include, but are not limited to, standards that regulate perimeter setbacks, dimensions, bulk, scale, coverage, minimum and maximum parking requirements, utilities, and public facilities.*



MEMORANDUM

Large Cities Model Code – Potential Revisions DLCD Middle Housing Model Code

DATE October 2, 2020
TO Middle Housing Rulemaking Advisory Committee (RAC) and Model Code Technical Advisory Committee (MCTAC)
FROM Matt Hastie, Kate Rogers and Cathy Corliss, APG
CC Ethan Stuckmayer, Robert Mansolillo, Kevin Young, and Sean Edging, DLCD

This memo summarizes potential revisions to the draft Large Cities Model Code in response to testimony and discussion at the Land Conservation and Development Commission (LCDC) hearing on September 25, 2020 as well as comments submitted to DLCD staff by the City of Portland. This memo summarizes the most relevant comments and provides our recommendations and some options for the RAC and MCTAC to consider at their joint meeting on October 8, 2020.

Cottage Cluster Design Standards

Representatives from the Oregon Homebuilders Association and Hayden Homes requested revisions to the cottage cluster design standards in the Model Code, requesting that certain standards be removed or made less prescriptive. A summary of these comments and our responses and recommendations are provided below:

1. **Comment: Remove courtyard orientation standard**

The current draft Model Code requires that a minimum of 50% of cottages must be oriented to the common courtyard, which means they must be within 10 feet and their main entrances must face the courtyard.

The Hayden Homes representative commented that these standards do not provide adequate flexibility for cottage cluster site design and inhibit the ability to locate parking spaces closer to cottages.

Recommendation: Keep the draft orientation standards as-is. The intent of these standards is to encourage a sense of community by clustering homes around a shared open space. Without any orientation requirement, cottages could entirely turn their backs to the required courtyard and could result in a development that no longer resembles what we think of as a cottage cluster. Further, flexibility is already provided by only requiring 50% of

cottages to be oriented to the common courtyard, while the remaining homes must orient to a pedestrian path or to the street.

2. **Comment: Remove or reduce parking design standards**

The draft Model Code includes a limited set of parking design standards related to the following:

- Clustered parking (groupings of up to 5 contiguous spaces separated by landscaping)
- Parking location (minimum setbacks; limits parking between cottages and street)
- Screening (from courtyard and the street)
- Garage/carport location (must not abut common courtyard) and width (garage door width limited to 12 feet)

The intent of these standards is to limit the visual impact of parking areas as viewed from common areas in the cottage cluster and from the street. The Hayden Homes representative commented that these standards are too prescriptive and excessively limit flexibility for parking design. He showed an example of a large cottage cluster site plan that would not be allowed under the Model Code standards. He called for the parking design standards to be reduced or eliminated.

Recommendations:

- **Clustered parking:** Potentially consider allowing more contiguous spaces per parking cluster for larger projects (i.e., those with more than XX cottages). The current standards may not encourage the most efficient use of space for larger projects. The Model Code could address this, for example, by allowing up to 8 contiguous spaces for projects with more than 16 cottages (this is not the recommendation, just an example).
- **Garage door width:** Potentially consider eliminating the garage door width limitation to allow a two-car garage. This may result in dwellings that no longer resemble cottages and are more like typical single-family homes, but if maximum flexibility is desired, this would be one avenue. A potential compromise would be to allow wider garages for alley-loaded lots only.
- **Other standards:** Keep as-is.

3. **Comment: Exempt garages up to 400 sf from building footprint calculation**

The definition of “building footprint” in the draft Model Code states that attached garages and carports are included in the building footprint calculation (which only applies to cottage clusters). The Hayden Homes representative recommended that up to 400 sf of attached garage space be exempted from the 900 sf footprint limit mandated by HB 2001. He argued that including garage floor area in the footprint calculation would excessively limit the remaining floor area that is available for living space.

Recommendation: Consider exempting up to 200 sf of attached garage/carport space from the maximum building footprint, but still include it in the overall floor area calculation. Two hundred square feet is equivalent to a 1-car garage (10 ft by 20 ft). Given the footprint limitation, this would provide a bit more flexibility inclusion of a modest garage. We recommend continuing to include garage area in the total floor area calculation, for the purpose of calculating average unit size in a cottage cluster. The total floor area of the cottage would still be subject to the maximum average unit size of 1,400 sf for the overall cottage cluster.

Relatedly, we also recommend placing some limits on detached garages and accessory structures, as suggested in comments from the City of Portland. Currently, the draft Model Code does not limit the size of detached garages, sheds, or other accessory structures. Since the draft Model Code does not limit floor area ratio (FAR) or lot coverage for cottage clusters, this creates opportunities for excessively large accessory structures. The code could set an absolute limit on the floor area, and possibly height, of these structures, or could include them in the cottage floor area (but not footprint) calculation.

Minimum Off-Street Parking

There were comments from Commissioner Lelack about potentially revising minimum off-street parking standards to account for the number of bedrooms per unit—the assumption being that larger households needing additional bedrooms will also have greater parking needs. However, we do not recommend changes to any of the Model Code’s minimum off-street parking ratios. The approach used in the Large Cities Model Code is consistent with the approach used in the adopted Medium Cities Model Code, which requires no off-street parking for a duplex. The approach also takes into consideration the financial analysis provided by ECONorthwest, which found that parking requirements can negatively impact development feasibility, particularly for triplexes and quadplexes.

Comments from City of Portland

Morgan Tracy from the City of Portland provided DLCD with detailed comments on the draft Model Code. Many of those comments relate to style or choice of language, or call for minor clarifications. Some of the more substantive issues raised in these comments and our responses and suggestions are briefly summarized below.

1. Floor Area Ratio for Triplexes and Quadplexes

Comments suggest we revise the way the Model Code scales or graduates maximum FAR limits based on the minimum lot size in the zone. We may want to consider refining the FAR tiers and the formula for calculating the tiers to avoid unintended consequences.

2. References to Other Clear and Objective Standards

- Permitted Uses and Approval Process for all Housing Types— The draft Model Code states that middle housing must be “subject only to clear and objective standards, approval criteria, conditions, and procedures.” The comments point out that discretionary review is

- mandatory in some areas, such as in historic districts. We may want to acknowledge this in the Model Code to avoid confusion or unintended consequences.
- Platting Standards for Townhouses – The Development Standards Applicability section states that Townhouses are subject to “any applicable clear and objective platting standards.” The City’s comments note that land divisions are limited land use decisions per ORS and typically do contain non-clear and objective standards—which is why they are land use decisions and not administrative procedures. The Model Code may need to acknowledge this somehow.

3. **Non Clear and Objective Terms**

The comments point out several terms that may not be clear and objective (such as “story,” “appropriate access easements,” etc.). We will want to ensure that all Model Code standards and terms are clear and objective.

4. **Size Limits and Design for Community Buildings in Cottage Clusters**

The draft Model Code includes community buildings in the calculation of average floor area for cottage clusters, but does not include other size limitations. The comments point out that this could be used as a loophole to achieve larger cottage sizes. (For example, if the community building is very small, the dwellings could all be larger than 1,400 sf and still achieve an average floor area of 1,400 sf). The comments also identify a potential loophole related to the community building being used as a dwelling. We may want to consider a separate floor area limit for the community building and potentially add other limitations to address the dwelling issue.

5. **Minimum Building Spacing for Cottage Clusters**

The draft Model Code defers to the Building Code for regulating building separation. However, the comments point out that while the minimum separation is typically 6 feet, it may be reduced to mere fractions of an inch with certain materials/construction. We should consider adding minimum building separation to the Model Code.

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 660-046-0235 establish standards related to the siting and design of Middle Housing types in urban growth boundaries. OAR 660-046-0300 to OAR 660-046-0370 establish the form and substance of an application and review process to delay the enactment of standards related to the siting and design of Middle Housing types in areas with significant infrastructure capacity deficiencies.

660-046-0010 Applicability

1. A local government that is a Medium City 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 660-023-0110, 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.
 - i. ~~Local governments may apply regulations to duplexes that apply to detached single-family dwellings in the same zone;~~
 - ii. ~~Local governments may limit the development of Middle Housing other than duplexes in areas that apply land use regulations as described in OAR 660-023-0050 through OAR 660-023-0110; and~~
 - iii. ~~If a local government has not adopted land use regulations as provided in OAR 660-023-0050 through 660-023-0110, it must apply a 100-foot setback to Middle Housing developed along a riparian corridor;~~
 - 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 applicable to 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 apply regulations to Middle Housing that apply to detached single-family dwellings in the same zone, except as provided below. If a local government has not adopted land use regulations to protect nationally significant historic resources, it must apply protective

Commented [A1]: Rationale: This standard allows local jurisdictions to limit additional development pressure in areas with sensitive Goal 5 natural resources.

Commented [A2]: Rationale: Our Goal 5 expert, raised that there are several jurisdictions that have not adopted Goal 5 protections and the regulatory mechanism that enforced Division 023 (i.e. Periodic Review) is defunct.

This provision sets a backstop to ensure housing development does not degrade riparian areas in local jurisdictions without Goal 5 regulations. This standard will not pre-empt existing/adopted Goal 5 regulations.

Note: this standard would not apply to SFD development and thus avoids a possible regulatory taking.

Commented [A3]: Consistency edit.

measures to Middle Housing as provided in OAR 660-023-0200(8)(a) until the local government adopts land use regulations in compliance with 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, or
- 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 – OAR 660-015-0000(6) allows local governments to limit development within a UGB in order to support attainment of federal and state air, water and land quality requirements. Local governments may apply regulations adopted pursuant to Goal 6 to the development of Middle Housing.

b-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); and
- 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; and
 - iii. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.

d. Goal 9: Pursuant to OAR 660-009-0025, cities and counties must adopt measures adequate to implement industrial and other employment development policies, including comprehensive plan designations. Local governments may limit the development of Middle Housing on lands zoned for residential use designated for future industrial or employment uses.

e-e. 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.

d-f. 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 Middle Housing in areas regulated to protect estuarine resources under Goal 16.

e-g. 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 Middle Housing that apply to detached single-family dwellings in the same zone.

f-h. 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

Commented [A4]: Note: This provision is particularly important to prevent the weaponization of historic districts by neighborhoods that seek to entrench patterns of exclusion. The preservationists I have worked with (Kim Fitzgerald, SHPO staff, Carrie Richter, and others) indicated that these standards do not relate to the historic integrity of a structure – the façade, form, and design of structures and district are the elements that relate to historic integrity.

While these districts will need to allow Middle Housing uses, they will still be able to apply the same form and design standards used to ensure historic integrity of a resource/district is maintained.

Commented [A5]: These edits come from our Goal 5 expert. The rationale provided:

“Local standards cannot override state and federal laws/rules so no need for the rule to give LGs permission to apply them. Local governments don’t generally apply state and federal standards. The exception is if they assume responsibility to do so, but this is only possible for some regulations (NPDES stormwater permitting for example).”

Commented [A6]: Rationale: This was added at the suggestion of Portland. It’s a narrow exception designed to prevent residential development of lands that will ultimately be rezoned for industrial/employment uses.

A good example is in Portland north of N Columbia Blvd in which there are various R-10 zoned lands that will ultimately be redesignated for industrial/employment uses (as identified by Metro’s [Industrial/employment regional designations](#)). Redeveloping these lands with Middle Housing would complicate this redesignation.

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 Model Codes. The applicable 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. The Medium City Model Code as provided in Exhibit A; and
 - b. The Large City Model Code as provided in Exhibit B.
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 ORS 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.
2. "Cottage Cluster" means a grouping of no fewer than four detached dwelling units per acre with a footprint of less than 900 square feet each and that include a common courtyard. Units may be located on a single Lot or Parcel, or on individual Lots or Parcels.
3. "Department" means the Department of Land Conservation and Development.
4. "Design standard" means a standard related to the arrangement, orientation, materials, appearance, articulation, or aesthetic of a dwelling unit or other elements on a site. Design standards include, but are not limited to, standards that regulate entry and dwelling orientation, façade materials and appearance, window coverage, driveway access, parking configuration, pedestrian access, screening, landscaping, and private, open, shared, community, or courtyard spaces.
5. "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.
6. "Duplex" means two attached dwelling units on a Lot or Parcel. A local government may define a Duplex to include two detached dwelling units on a Lot or Parcel.
7. "Goal Protected Lands" means lands protected or designated pursuant to any one of 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; or
 - g. Goal 18 Beaches and Dunes.
8. "Infrastructure Constrained Lands" means lands where it is not feasible to provide acceptable water, sewer, storm drainage, or transportation services to serve new Triplexes, Quadplexes, Townhouses, or Cottage Cluster development; where the local government is not able to correct the infrastructure limitation by utilizing the process outlined in OAR 660-046-0300 through OAR 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.

Commented [A7]: Rationale: Refined to match definition in HB 2001 and better clarify that they can be provided on one lot or parcel or individual lots or parcels.

Commented [A8]: Rationale: There has been extensive conversation on how to structure rules to provide jurisdictions more options than solely the Model Code to apply design standards. Staff has developed an approach that gives jurisdictions more flexibility in how to apply design standards without causing unreasonable cost or delay, but a consequence of that flexibility is needing more clarification as what is a "siting" vs a "design" standard, as each is regulated differently in the rules.

This is an attempt to better distinguish a design standard from a siting standard, and it includes a list standards that we address in rule and the Model Code to provide clear examples of what is a design standard.

9. "Large City" means each city with a certified Portland State University Population Research Center estimated population of 25,000 or more 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 that are provided with sufficient urban services as defined in ORS 195.065. Sufficient urban services means areas that are within a urban service district boundary.
10. "Lot or Parcel" means any legally created unit of land.
11. "Master Planned Community" means a site that is any one of the following:
 - a. Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary that is zoned for or proposed to be zoned for residential development, and which is not currently developed with urban residential uses, for which a Large City proposes to adopt, by ordinance, a master plan or a plan that functions in the same manner as a master plan;
 - b. Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary for which a Large City adopted, by ordinance, a master plan or a plan that functions in the same manner as a master plan after the site was incorporated into the urban growth boundary; or
 - c. Added to the Large City's urban growth boundary after January 1, 2021 for which the Large City proposes to adopt, by ordinance, a master plan or a plan that functions in the same manner as a master plan.
12. "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.
13. "Middle Housing" means Duplexes, Triplexes, Quadplexes, Cottage Clusters, and Townhouses.
14. "Model Code" means the applicable model code developed by the Department contained in OAR 660-046-0010(4).
15. "Quadplex" means four attached dwelling units on a Lot or Parcel. A local government may define a Quadplex to include any configuration of four detached or attached dwelling units on one Lot or Parcel.
16. "Siting standard" means a standard related to the position, scale, and form of a structure or a standard that makes land suitable for development. Siting standards include, but are not limited to, standards that regulate perimeter setbacks, dimensions, bulk, scale, coverage, minimum and maximum parking requirements, utilities, and public facilities.
- ~~16-17.~~ "Townhouse" means a dwelling unit that is part of a row of two or more attached units, where each unit is located on an individual Lot or Parcel and shares at least one common wall with an adjacent unit.
- ~~17-18.~~ "Triplex" means three attached dwelling units on a Lot or Parcel. A local government may define a Triplex to include any configuration of three detached or attached dwelling units on one Lot or Parcel.
- ~~18-19.~~ "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.

Commented [A9]: Rationale: Adding a definition of "sufficient".

Commented [A10]: Rationale: edits to clarify what exactly is a Master Planned Community or similar.

Commented [A11]: Rationale: As mentioned above, this definition is necessary to better clarify a siting from a design standard as each is regulated differently in the rules.

This definition, like for "design standard" above, includes a list of siting standards addressed in rule.

Commented [A12]: City of Portland distinguishing whether RF zoning is applicable

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 under subsection (1) pursuant to the applicable sections of OAR 660-046-0300 through OAR 660-046-0370.
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 660-046-0010(4) in its entirety to all proposed Middle Housing development applications until such time as the local government 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).
5. If a 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 local government is deemed to have acted. Accordingly, the local government 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 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 has not adopted land use regulations or amended its comprehensive plan within 120 days of the date of the remand, the local government is deemed not to have acted under sections (3) and (4).
6. If a local government has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the local government'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).
7. If a local government 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.
8. Where a local government 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 development code that conflict with the applicable sections of 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 it as a Medium City, the local government must comply with this division within one year of its qualification as a Medium City.
2. If a local government was not previously a Large City and a certified Portland State University Population Research Center population estimate qualifies it as a Large City, the 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; 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).

Commented [A13]: Rationale: Subsection (4) of this statute is a bit too specific and omits important nuances, such as discretionary alternative tracks, historic districts, etc. Subsection (4) is struck throughout the document.

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 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 allow the granting of 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

Additions to or 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 660-046-0235 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 in the same manner as required by Medium Cities in OAR 660-046-0100 through OAR 660-046-0130.
2. A Large City must allow for the development of Triplexes, Quadplexes, Townhouses, 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 regulate or limit development of these types of Middle Housing on the following types of lands:
 - a. Goal-Protected Lands: Large Cities may regulate Middle Housing ~~other than Duplexes~~ on Goal-Protected Lands as provided in OAR 660-046-0010(3);
 - b. Infrastructure Constrained Lands: Large Cities may limit the development of Middle Housing other than Duplexes on Infrastructure Constrained Lands. In order to demonstrate that an area is an Infrastructure Constrained Land, the Large City must adopt findings in conjunction with the adoption of required Middle Housing allowances that demonstrate that the infrastructure limitation is consistent with the definition provided in OAR 660-046-0020, could not be addressed through the process provided OAR 660-046-0300, and could not be addressed with required improvements that would be expected with Middle Housing development. The Large City may not consider an area to be infrastructure constrained based on any lack of improvements beyond those listed in OAR 660-046-0340;
 - c. Master Planned Communities: Large Cities may regulate or limit the development of Middle Housing other than Duplexes in Master Planned Communities as follows:

- A. If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan after January 1, 2021, it may not limit the development of any Middle Housing type on lands where single-family detached dwellings are also allowed, but may limit overall net residential density within the master plan area provided that the allowed net residential density is least 15 dwelling units per acre. A Large City may designate areas within the master plan exclusively for other housing types, such as multi-family residential structures of five units or more or manufactured home parks. A Large City may not limit future conversion or redevelopment of already constructed single-family detached or middle housing residential units to any Middle Housing type.
- B. If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan before January 1, 2021, it may limit the development of Middle Housing other than Duplexes provided it authorizes in the entire master plan area a net residential density of at least eight dwelling units per acre and allows all residential units, at minimum, to be detached single-family dwellings or Duplexes. A local government may only apply this restriction to portions of the area not developed as of January 1, 2021, and may not apply this restriction after the initial development of any area of the master plan or a plan that functions in the same manner as a master plan.
- d. Impacted by State or Federal Law: A Large City must demonstrate that regulations or limitations of Middle Housing other than Duplexes are necessary to implement or comply with an established state or federal law or regulation on these types of lands.
3. A Large City may:
- a. Allow for the development of Triplexes, Quadplexes, Townhouses, 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 as provided in OAR 660-046-0205 through OAR 660-046-0235; or
- b. Apply separate minimum lot size and maximum density provisions than what is provided in OAR 660-046-0220, provided that Middle Housing other than Duplexes is allowed on the following percentage of Lots and Parcels zoning for residential use that allow for the development of detached single-family dwellings, excluding lands described in subsection (2):
- A. Triplexes – Must be allowed on 80% of Lots and Parcels;
- B. Quadplexes - Must be allowed on 70% of Lots and Parcels;
- C. Townhouses - Must be allowed on 60% of Lots and Parcels;
- D. Cottage Clusters – Must be allowed on 50% of Lots and Parcels.
- E. A Middle Housing type is “allowed” on a Lot or Parcel when the following criteria are met:
- i. The Middle Housing type is a permitted use on that Lot or Parcel under the same administrative process as a single-family detached dwelling in the same zone;
- ii. The Lot or Parcel has sufficient square footage to allow the Middle Housing type within the applicable minimum lot size requirement;
- iii. Maximum density requirements do not prohibit the development of the Middle Housing type on the subject Lot or Parcel; and
- iv. The applicable siting or design standards do not individually or cumulatively cause unreasonable cost or delay to the development of that Middle Housing type as provided in OAR 660-046-0210(3).
- F. A Large City must ensure the equitable distribution of Middle Housing by allowing, as defined in subsection (3)(b)(F) above, at least one Middle Housing type other than Duplexes on 75 percent of all lots and parcels zoned for residential use that allow for the development of detached single-family dwellings within each census block group within a Large City.
- G.

Commented [A14]: Proposed re-write provide by the City of Wilsonville:

If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan after January 1, 2021 with a net density of at least 15 units per acre, it does not need to allow all middle housing types on all lots zoned for single-family and duplex dwellings during initial build out and development, but must allow for all Middle Housing types in the master plan area. A Large City may not limit future conversion or redevelopment of already constructed residential units to any Middle Housing type. Exemptions to density maximums for middle housing or alternative density calculations for middle housing expressed elsewhere in these rules do not apply to the initial development and future redevelopment of Master Planned Communities complying with this subsection.”

Commented [A15]: Rationale: A title was needed here so that this section reads the same as a – c, and not as an additional requirement that is required in addition to a, b, or c.

Commented [A16]: 2 Performance Metric options proposed by the City of Beaverton. The first combines percentages and lot sizes. The second focuses on percentages of one or more middle housing allowed on lots.

A. Percentage adjustments method 1:

- Triplexes: 60 percent of all lots
- Quadplexes: 60 percent of lots 7,000 square feet or greater
- Townhouses: 60 percent of all lots
- Cottage Clusters: 60 percent of lots 7,000 square feet or greater

B. Percentage adjustments method 2:

- At least 75 percent of lots citywide must allow one of the four housing types.
- At least 30 percent of lots citywide must allow at least two housing types.

C. Citywide, triplexes and townhouses must be allowed on 50 percent of citywide lots and quadplexes and cottage cluster must be allowed on at least 33 percent of lots.

City of Springfield had a similar proposal for cottage clusters: 50% of lots over 7,000 sf.

These proposals would reduce the amount of middle housing allowed in Large Cities

Commented [A17]: Rationale: Less specific, since it covers all contingencies as written.

Commented [A18]: Rationale: Edits increase clarity as to how the metric applies.

4. Pursuant to OAR 660-046-0205 through OAR 660-046-0230, the following numerical standards related to Middle Housing types apply:
 - a. Duplexes – Large Cities may allow more than two dwellings units on a Lot or Parcel, including any accessory dwelling units.
 - b. Triplexes and Quadplexes – Large Cities may allow more than four units on a lot, including any accessory dwelling units.
 - c. Townhouses – Large Cities must require at least two attached Townhouse units and must allow up to four attached Townhouse units. A Large City may allow five or more attached Townhouse units.
 - d. Cottage Clusters –
 - A. A Large City is not required to set a minimum number of dwelling units in a Cottage Cluster, but if it chooses to, it may require a minimum of three, four, or five units in a Cottage Cluster. A Large City may allow but may not require greater than five units in a Cottage Cluster.
 - A-B. A Large City must allow up to eight cottages clustered around a common courtyard. Nothing in this section precludes a local government from permitting greater than eight units clustered around a common courtyard.

Commented [A19]: Consistency edits

Commented [A20]: Proposed language from the City of Beaverton:

“Local governments must require at least two attached Townhouse units and must allow up to four attached Townhouse units on sites large enough to physically accommodate those units given the local government siting and design standards allowed under this Division.”

Rationale: This language attempts to clarify the number of townhouse units allowed by a local jurisdiction.

Commented [A21]: Rationale: This edit is an attempt to clarify the intent of the standard. This addresses comments from cities on needing additional clarity.

What this standard is trying to balance are several points raised by RAC members:

- Some jurisdictions would prefer a clear parity between quadplexes and cottage clusters in which cottage clusters have a minimum of five units
- RAC members note that a cottage cluster *could* be as few as three units.
- Requiring greater than five units would functionally preclude cottage clusters on smaller lots, as other applicable standards would make it impossible for a development to meet the minimum required number of units with the amount of space.

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; and
 - b. Do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable costs or delay.
3. 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 processes provided in OAR 660-046-0215;
 - c. Siting standards provided in OAR 660-046-0220;
 - d. Design standards in Large Cities provided in OAR 660-046-0230;
 - e. Middle Housing Conversions provided in OAR 660-046-0230;
 - f. Alternative siting or design standards provided in OAR 660-046-0235; and
 - g. 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. 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 siting standards apply to Large Cities’ regulation of Triplexes and Quadplexes:
 - a. Minimum Lot or Parcel Size:
 - A. For Triplexes:

- i. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is 5,000 square feet or less, the minimum Lot or Parcel size for a Triplex may be up to 5,000 square feet.
- ii. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is greater than 5,000 square feet, the minimum Lot or Parcel size for a Triplex may not be greater than the minimum Lot or Parcel size for a detached single-family dwelling.
- B. For Quadplexes:
 - i. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is 7,000 square feet or less, the minimum Lot or Parcel size for a fourplex may be up to 7,000 square feet.
 - ii. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is greater than 7,000 square feet, the minimum Lot or Parcel size for a Quadplex may not be greater than the minimum Lot or Parcel size for a detached single-family dwelling.
- C. A Large City may apply a lesser minimum Lot or Parcel size in any zoning district for a Triplex or Quadplex than provided in paragraphs A. or B.
- b. **Density:** If a Large City applies density maximums in a zone, it may not apply those maximums to the development of Quadplex and Triplexes.
- c. **Setbacks:** A Large City may not require setbacks to be greater than those applicable to detached single-family dwellings in the same zone.
- d. **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.
- e. **Parking:**
 - A. For Triplexes, a local government may require up to the following off-street parking spaces:
 - i. For Lots or Parcels of 3,000 square feet or less: one space in total;
 - ii. For Lots or Parcels greater than 3,000 square feet and less than or equal to 5,000 square feet: two spaces in total; and
 - iii. For Lots or Parcels 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 or Parcels of 3,000 square feet or less: one space in total;
 - ii. For Lots or Parcels greater than 3,000 square feet and less than or equal to 5,000 square feet: two spaces in total;
 - iii. For Lots or Parcels greater than 5,000 square feet and less than or equal to 7,000 square feet: three spaces in total; and
 - iv. For Lots or Parcels greater than 7,000 square feet: four spaces in total.
 - C. A Large City may allow 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.
 - F. A Large City may not apply additional minimum parking requirements to Middle Housing created as provided in OAR 660-046-0230.
- f. **Lot or Parcel Coverage and Floor Area Ratio:** Large Cities are not required to apply Lot or Parcel coverage or floor area ratio standards to Triplexes or Quadplexes. However, if the Large City chooses to apply Lot or Parcel coverage or floor area ratio standards, it may not establish a cumulative Lot or Parcel coverage or floor area ratio for Triplexes or Quadplexes that is less than established for detached single-family dwelling in the same zone.

Commented [A22]: Proposed edit from Wilsonville: Add "...beyond the first unit on the lot or parcel."

Rationale: When certain types of middle housing are exempt from density maximums, it makes sense that the first unit on the property still counts towards the maximum. This is consistent with how ADU's are handled. The primary unit counts towards density but the ADU (additional unit) does not. Please provide clear language in the rules that clarifies this point.

3. The following rules apply to Large Cities' regulation of Townhouses:
 - a. Minimum Lot or Parcel Size: A Large City is not required to apply a minimum Lot or Parcel size to Townhouses, but if it chooses to, the average minimum Lot or Parcel size may not be greater than 1,500 square feet. A Large City may apply separate minimum Lot or Parcel sizes for internal, external, and corner Townhouse Lots or Parcels provided that they average 1,500 square feet, or less.
 - b. Minimum Street Frontage: A Large City is not required to apply a minimum street frontage standard to Townhouses, but if it chooses to, the minimum street frontage standard must not exceed 20 feet. A Large City may allow frontage on public and private streets or alleys, and shared or common drives. If a Large City allows flag Lots or Parcels, it is not required to allow Townhouses on those Lots or Parcels.
 - 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 or Parcel 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 covered or structured parking, their height standards must allow construction of at least three stories. If local governments do not mandate covered or structured 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.
 - C. 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. 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 or Parcel coverage, floor area ratio, and maximum unit size, those standards cannot cumulatively or individually limit the bulk and scale of the cumulative 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 or Parcel size, and the minimum smallest dimension may not exceed the Lot or Parcel 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 rules apply to Large Cities' regulation of 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 Clusters. However, if a Large City chooses to regulate minimum Lot or Parcel size for Cottage Clusters, the following provisions apply:
 - A. If the minimum Lot or Parcel size in the same zone for a detached single-family dwelling is 7,000 square feet or less, the minimum Lot or Parcel size for a Cottage Cluster may be up to 7,000 square feet.
 - B. If the minimum Lot or Parcel size in the same zone for a detached single-family dwelling is greater than 7,000 square feet, the minimum Lot or Parcel size for a Cottage Cluster may not be greater than the minimum Lot or Parcel size for a detached single-family dwelling.
 - b. Minimum Lot or Parcel Width: A Large City is not required to apply minimum Lot or Parcel width standards to Cottage Clusters. However, if a Large City chooses to regulate minimum Lot or

Commented [A23]: Rationale: Clarifying intent.

Commented [A24]: Rationale: The intent of this standard is to allow jurisdictions to apply a two-story height limitation to townhouses to regulate the relative form while preventing scenarios that cause unreasonable cost or delay.

It is not feasible to build a two-story townhouse with structured parking, but it is feasible to build a two-story townhouse with uncovered surface parking.

Commented [A25]: Rationale: This is a design standard and does not belong in the siting standards section. Originally, this was addressed through the Model Code, but was struck and needed clarification somewhere in rule to ensure this tool was available for jurisdictions that would opt to use it.

However, there is now a path for these jurisdictions to apply an Open Space standard to townhouses through OAR 660-046-0225 and limitations on numeric standards to prevent unreasonable cost or delay.

Parcel width for to Cottage Clusters, it may not require a minimum Lot or Parcel width that is greater than the standard for a single-family detached dwelling in the same zone.

- c. Density: A Large City may not apply density 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 dwellings in the same zone. Additionally, perimeter setbacks applicable to cottage cluster units may not be greater than ten feet. The minimum distance between structures may not be greater than what is required by applicable building code requirements or 10 feet.
- e. ~~A Large City must allow a Cottage Cluster to be a height of at least one story.~~
- f.e. Unit Size: A Large City may limit the minimum or maximum size of dwellings in a Cottage Cluster, but must apply a maximum building footprint of 900 square feet per unit. A Large City may exempt up to 200 square feet in the calculation of building footprint for an attached garage or carport. A Large City may not include detached garages, carports, or accessory structures in the calculation of building footprint.
- f.f. Parking:
 - A. A Large City may not require more than one off-street parking space per unit in a Cottage Cluster.
 - B. A Large City may allow but may not require off-street parking to be provided as a garage or carport.
 - C. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
- h.g. Lot or Parcel Coverage and Floor Area Ratio: A Large City may not apply Lot or Parcel coverage or floor area ratio standards to Cottage Clusters.
- h.h. Nothing in this division precludes a Large City from allowing Cottage Cluster units on individual Lots or Parcels within the Cottage Cluster development.

Commented [A26]: The minimum distance between all structures, including accessory structures, shall be in accordance with building code requirements.

Commented [A27]: Rationale: Clarifying edit.

Commented [A28]: Rationale: Unnecessary to clarify.

Commented [A29]: Rationale: Hayden Homes suggested a 400 SF exemption for garages in calculating a building footprint.

Adding an exemption would prevent over-incentivizing the use of detached or surface parking, which would be more challenging for people with limited mobility to navigate. On the other hand, A cumulative building footprint of 1300 SF extends beyond what can reasonably be considered a "cottage".

Commented [A30]: The rationale behind this standard is that what will ultimately regulate lot coverage and FAR are:

- Setbacks
- Required Courtyard area
- Required Pedestrian paths
- Required Off-Street parking
- Building footprint max of 900 SF
- Any applied height or unit size limitations

Layering a lot coverage or FAR standard *on top* of these other standards would be very difficult for a cottage cluster development to meet.

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

1. A Large City is not required to apply design standards to Middle Housing. However, if a Large City chooses to apply design standards to Middle Housing, it may only apply the following:
 - a. Design standards in the Model Code for Large Cities in OAR 660-046-0010(4)(b);
 - b. Design standards that are less restrictive than the Model Code for Large Cities in OAR 660-046-0010(4)(b);
 - c. The same clear and objective design standards that the Large City applies to detached single-family structures in the same zone. Design standards may not scale by the number of dwelling units or other features that scale with the number of dwelling units, such as primary entrances. Design standards may scale with form-based attributes, including but not limited to floor area, street-facing façade, height, bulk, and scale; or
 - d. Alternative design standards as provided in OAR 660-046-0235.
2. A Large City may not apply design standards to Middle Housing created as provided in OAR 660-046-0230.

Commented [A31]: Note: The rationale behind this rule is to both incentivize additional options and incentivize the retention of existing homes rather than demolition and replacement.

Additionally, this provision will provide options to mitigate displacement by providing homeowners options to convert existing units to Middle Housing, instead of selling and moving elsewhere.

Finally, the Legislature clarified that reasonable siting and design standards applicable to ADUs *do not* include requirements to construct additional off-street parking – we feel this approach is consistent with that intent.

660-046-0230 Middle Housing Conversions

1. Additions to or conversion of an existing detached single-family dwelling into Middle Housing is allowed in Large Cities 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 the granting of the same exceptions to Middle Housing.
3. A preexisting detached single-family dwelling may remain on a Lot or Parcel with a Cottage Cluster under the following conditions:

- a. The preexisting single-family dwelling may be nonconforming with respect to the requirements of the applicable code;
- b. The preexisting single-family dwelling may be expanded up to the maximum height, footprint, or unit size required by the applicable code; however, a preexisting single-family dwelling that exceed the maximum height, footprint, or unit size of the applicable code may not be expanded;
- c. The preexisting single-family dwelling shall count as a unit in the Cottage Cluster;
- d. The floor area of the preexisting single-family dwelling shall not count towards any Cottage Cluster average or Cottage Cluster project average or total unit size limits.
- e. A Large City may apply a time limit on the conversion of a single-family dwelling to a Cottage Cluster not to exceed five years.

Commented [A32]: Rationale: This approach was originally derived from the Model Code and is intended to incentivize the retention of existing homes (instead of demolition and replacement). These are consistency edits to increase clarity.

Commented [A33]: Rationale: This is in response to a raised hypothetical scenario in which a SFD is immediately converted to a Cottage Cluster, bypassing footprint limitations for one unit. While staff considers this scenario unlikely due to the holding costs associated with the strategy, allowing a time limit of five years would preclude this hypothetical without hindering the intended policy outcome of this provision – to incentivize the retention of existing homes.

660-046-0235 Alternative Siting or Design Standards

A Large City may adopt siting or design standards not authorized by OAR 660-046-0220 or OAR 660-046-0225 as allowed under subsection (1) or (2) or (3) below if the city can demonstrate that it meets the applicable criteria laid out in either subsection (1) or (2) or (3) below. Siting or design standards do not include minimum Lot or Parcel size and maximum density requirements.

Commented [A34]: Note: The FHCO letter suggested adding a provision on measuring the equitable distribution of housing via OAR 660-046-0205. This section, OAR 660-046-0235, will not give jurisdictions the ability to preclude middle housing – it will only apply to siting or design standards and will not include minimum lot, maximum density, or use standards.

1. Existing Alternative Siting or Design Standards – A Large City must submit to the Department of Land Conservation and Development findings and analysis demonstrating that siting or design standards adopted prior to the adoption of these rules for Middle Housing types not in compliance with the standards provided in OAR 660-046-0220 or OAR 660-046-0225 have resulted in the substantial production of Middle Housing in areas where the standard was applied such that the standards have not, and will not in the future, individually or cumulatively cause unreasonable cost or delay to the development of Middle Housing.
 - a. Substantial production means:
 - i. The areas in which the Large City has applied the alternative standard or standards achieved a three percent or greater production rate of the applicable Middle Housing type over the time frame during which the Large City applied the standard or standards. At a minimum, the time frame must include two years of housing production data and housing production data from the full time frame in which the Large City applied the standard or standards. The production rate is the ratio of building permits issued for the applicable Middle Housing type in comparison to the total building permits issued for all Middle Housing and detached single-family dwellings over the same time frame; and
 - ii. The areas in which the Large City applied the alternative standard or standards have a sufficient quantity of remaining sites where the Large City can accommodate Middle Housing to ensure a minimum three percent production rate over a twenty year horizon. The production rate is the ratio of building permits issued for the applicable Middle Housing type in comparison to the total building permits issued for all Middle Housing and detached single-family dwellings over the same time frame.
 - b. If a Large City applied a design standard or standards that resulted in the substantial production of Middle Housing in a zone where the standard was applied, the Large City may apply that standard or standards in other zones, provided that any numerical standard that scales by dwelling unit scales proportionally with the minimum Lot or Parcel size of the zoning district in which it applies; and; and
 - c. A Large City may not apply a siting standard or standards to Middle Housing in other areas where it did not previously apply.
2. New Alternative Siting or Design Standards – A Large City must submit to the Department of Land Conservation and Development findings and analysis demonstrating that the proposed standard or standards will not, individually or cumulatively, cause unreasonable cost or delay to the development of Middle Housing. To demonstrate that, the Large City must consider how a standard or standards,

Commented [A35]: The intent of this standard is to avoid penalizing early adopters of Middle Housing, provided they can meet a threshold of production in the area where a standard or standards are applied. It is functionally intended to allow jurisdictions to continue application of standards in areas that demonstrate substantial production.

It also provides additional flexibility for existing design standards, described in greater detail below.

Commented [A36]: Rationale: This is a suggested revision from Hillsboro raising that if a local government applies design standards (not siting standards) that currently achieves substantial Middle Housing production, then they should be able to use those design standards in other districts.

The intent of this provision is to allow that flexibility, while ensuring that large numeric standards that may work in large lot zones, don't preclude middle housing development in small lot zones. Other design standards that scale by form or are non-numeric could be applied without adjustment.

Commented [A37]: This standard is not intended to allow a jurisdiction to apply a siting standard out of compliance with OAR 660-023-0220 citywide. This subsection clarifies that intent.

individually and cumulatively, affect the following factors in comparison to what is would otherwise be required under OAR 660-046-0220 or OAR 660-046-0225:

- a. The total time and cost of construction, including design, labor, and materials;
- 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 public need or interest the standard(s) fulfill.

DRAFT