

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED

06/26/2020 3:26 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopt OARs in accordance with HB 2001(2019)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/05/2020 8:30 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Casaria Taylor
503-934-0065
casaria.taylor@state.or.us

635 Capitol Street
Ste. 150
Salem, OR 97031

Filed By:
Casaria Taylor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/23/2020

TIME: 8:00 AM

OFFICER: LCDC

ADDRESS: Virtual Hearing
no address

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Please check the LCDC webpage for details

<https://www.oregon.gov/lcd/Commission/Pages/Meetings.aspx>

DATE: 08/05/2020

TIME: 8:00 AM

OFFICER: LCDC

ADDRESS: Virtual Hearing
no address

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Please check the LCDC webpage for details

<https://www.oregon.gov/lcd/Commission/Pages/Meetings.aspx>

NEED FOR THE RULE(S):

In 2019, the Oregon Legislature passed HB 2001, which established the requirement for medium, large, and metro cities to allow middle housing types in areas that are zoned for residential use and allow for the development of detached single-family dwellings. Cities may regulate the siting and design of middle housing in these areas, so long as the regulations do not, individually or cumulatively, cause unreasonable cost and delay to the development of middle housing. HB 2001 also creates a process by which a local government may make a request to the Department of Land Conservation and Development to delay the enactment of middle housing provisions and regulations in specific areas of the city that have an existing infrastructure deficiency or an expected infrastructure deficiency by December 31, 2023. The Department proposes Oregon Administrative Rules 660-046-300 through -0370 regarding the form and substance of a local government's application for a time extension to the required enactment of middle housing provisions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR 660-008; OAR 660-015; OAR 660-023; OAR 660-024; ORS 197; Oregon Laws 2019, chapter 639, section 4 are available at the department, 635 Capitol Street NE, Salem, OR 97301 and online.

FISCAL AND ECONOMIC IMPACT:

The Infrastructure-Based Time Extension Request Rules may result in fiscal and economic impacts to the following persons or entities:

- State Agencies
- Units of Local Government
- Small and Large Businesses
- The public

Any fiscal and economic impacts of these rules on these persons or entities is described in the sections below.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed rules may result in fiscal and economic impacts, including those summarized in brief below.

- Direct Impacts: these impacts are the direct result of the proposed rules and are likely to occur.
 - o There are no mandatory compliance costs under the rules because they create a voluntary process that local governments may choose to pursue. However, there will be compliance costs for local governments that choose to conduct the subsequently required analysis and to prepare the necessary documentation to demonstrate consistency with the proposed rules.
 - o Review costs for DLCD to evaluate local government applications.
 - o There may be an increased demand for services from small and large businesses that provide infrastructure analysis as a result of the need for local governments to update plans or provide analysis to support an IBTER application.
- Indirect Impacts: these impacts could occur as a result of changes made by local governments to respond to the new rules. While they are possible, they depend on a variety of other factors related to how local governments choose to respond to the rules. These impacts are not directly or indirectly caused by the proposed rules because they depend on voluntary action by local governments.
 - o Impacts to rate-payers, property owners, and/or new development resulting from a need by local governments to generate funding to pay for additional infrastructure or accelerate infrastructure improvement projects.
 - o Impacts to adjacent property owners resulting from infrastructure improvements in their vicinity.

The anticipated fiscal and economic impacts in each of these categories are discussed in more detail below. There are no direct compliance costs for the public at large, state agencies, or businesses, as the proposed rule does not apply to any of these persons or entities directly.

Direct Impacts

Effects to Local Governments

There are no direct compliance costs for local governments because local governments are not required to participate

in the IBTER program. The IBTER program creates an optional process whereby a certain local government may apply for an extension to allow it to meet the timelines to adopt land use regulations and amendments to local plans that are required by HB 2001. If a local government is able to meet the timelines for adoption of land use regulations or adopting amendments to its comprehensive plan, it will not be impacted by the proposed rules.

There will be compliance costs for jurisdictions that decide to apply for an IBTER for a given area rather than implementing code amendments or adopting land use regulations to meet the timelines contained in HB2001 that apply in the absence of an extension under the IBTER rules.

There are 56 local governments in Oregon subject to HB2001 requirements and eligible to apply for an IBTER if they have identified specific areas with water, sewer, storm draining, or transportation services that are significantly deficient or expected to be significantly deficient and they have a plan of action to remedy any deficiencies. For those jurisdictions that are eligible and choose to apply, the proposed rules will require, at a minimum, compiling information from existing plans and documents, along with other information required in the proposed rules, to demonstrate infrastructure deficiencies and the anticipated timing to resolve them. In some cases, additional analysis may be needed to determine whether an infrastructure system deficiency would occur given the assumptions stipulated in the proposed rules, to determine what improvements would be needed to address a deficiency, and to evaluate potential options to accelerate the timing of planned improvements.

The cost of conducting this analysis and preparing the required documentation could range from \$5,000 to \$35,000 depending on the amount of information already available to be compiled and the amount of additional analysis of infrastructure capacity needed to create a valid justification as part of an IBTER application.

Effects to State Agencies

There are no direct compliance costs for other state agencies, as state agencies are not directly subject to the proposed rules.

There will be costs in implementing the rules to DLCD. DLCD staff will be responsible for review of the IBTERs. Because there is some discretion involved in the review and because the submittals are likely to contain a relatively large amount of technical material that is outside the expertise of the core DLCD staff, this will increase costs relative to DLCD's usual functions.

In addition to the time required for the review by existing DLCD staff, the agency may enlist assistance from engineering professionals, likely to be compensated at an agreed upon hourly rate. However, the number of IBTER applications that will be received is not known, thereby making it difficult to determine potential costs to the agency.

Additionally, there is the potential for DLCD to incur Department of Justice legal fees in situations where a local government files an appeal to DLCD's IBTER application decision. DLCD also maintains authority to enact an enforcement order, which would incur legal fees and demand a modest increase in staff effort in time to review and compile legal records relative to the norm.

Effects to Small and Large Businesses

There are no direct compliance costs for small and large business because no businesses are subject to the proposed rules. Thus, there are zero small businesses and zero large businesses that are subject to the proposed rules and no types of business or industries that are subject to the proposed rules. Similarly, there are no projected reporting, recordkeeping, or other administrative activities required for compliance with the proposed rules for small or large businesses, and there are no equipment supply, labor, or increased administration costs required for compliance with the proposed rules.

However, there may be indirect economic impacts to small and large businesses. Because the additional analysis required to support an IBTER may go beyond the capacity or skill-set of the staff of some local jurisdictions who choose to participate in the IBTER program, some jurisdictions may need to contract with engineering or other firms to assist with evaluating infrastructure limitations and potential solutions. This could create an increase in opportunities for those businesses.

Other Impacts

These impacts are not directly or indirectly caused by the proposed rules because they depend on voluntary action by local governments. It is difficult for DCLD to determine these indirect effects of the proposed rules because the main fiscal impacts will result from the individual jurisdiction's decisions on how to respond to the proposed rules—and these impacts are not from the proposed rules per se. However, DCLD is providing a description of some possible indirect impacts of local government action because it believes this information could be helpful to the public.

Impacts to rate-payers, property owners, and new development

The proposed rules provide that the local governments must show that “the proposed approach is the most expeditiously feasible approach available to address the constraint.” While this will often be achieved within the city's existing funding sources, in some situations, a local government may need to identify or raise additional revenue to fund the required improvements if they are not already funded or if funding must be accelerated to begin the project sooner than previously planned. This additional revenue could come from a variety of funding tools, such as:

- New or increased System Development Charges (SDCs);
- Increase to rates (e.g. for water, sewer, or stormwater);
- Local Improvement Districts (LIDs);
- Bonds; and
- Other new or existing funding sources that are legally allowed to be used for infrastructure improvements (e.g. general fund, fees, etc.).

Each of these potential funding tools would impact different members of the public and businesses as summarized below.

- SDCs: Implementing new or increased SDCs would increase the cost of new development, but would not materially

affect existing residents or businesses. SDC rates must be set based on estimated costs for a defined list of projects. Adding one or more additional projects would increase the rate that the jurisdiction could charge, though the magnitude of the impact would depend on the magnitude of the new project costs and whether the jurisdiction chooses to collect the full amount that is legally allowed based on the project list. A major increase is unlikely as a result of the proposed rules. A small increase could have a modest impact on the feasibility of new development and on the opportunities and margins for businesses that engage in or provide services for development and construction.

- Rate increases for water, sewer, stormwater, or transportation usage fees (if applicable) would increase on-going costs to residents and businesses within the service area. The distribution of the impacts of those rate increases would depend on the rate structure and the available programs to assist low-income households or others. A major increase in rates is unlikely as a result of the proposed rules, especially since the additional cost would be distributed among all rate payers.
- LIDs: An LID charges an assessment to all property owners in a specific benefitted area to pay for a particular infrastructure improvement. The assessments are typically proportional, though there are a range of methodologies to establish the cost-sharing. An LID would increase costs for owners of benefitted properties (and potentially for tenants of any rental properties affected).
- General Obligation Bonds: A jurisdiction can use general obligation bonds (GO bonds) to fund infrastructure projects. GO bonds require a public vote, and are paid for through increases to property taxes throughout that taxing district. All property owners within the taxing district would have increased on-going property tax costs for the bonding period, which can be 20 years, or more. In addition, the jurisdiction would be subject to the costs of putting the bond on the ballot for a public vote.
- Revenue Bonds: Certain types of infrastructure that generate a revenue stream (e.g. sewer and water) can use bonds backed by revenue from rates to fund capital investments. Unlike GO bonds, revenue bonds do not require a public vote.
- Other: Other options vary by the type of infrastructure that will be funded, but can include user fees (e.g. fees for use of the right of way) paid by certain types of businesses (e.g. telecommunications companies), gas taxes, state and federal grants, etc.

Impacts to Adjacent Property Owners

In some cases, the construction of the needed infrastructure improvement may impact adjacent property owners. Examples of situations where this could occur include:

- If infrastructure limitations were precluding full use or additional development of the property under the existing regulations or otherwise making the area undesirable (e.g. flooding due to inadequate storm drainage), the infrastructure improvement could increase the value of the property.
- If the infrastructure improvement creates visual, access, or other impacts on adjacent properties (for example, visual impacts from a new pump station or access changes as a result of a roadway or intersection improvement project), this could decrease the value of the adjacent property.
- In a limited number of cases, the property owner could be required to pay to connect to or modify their connection to the system as a result of the improvement. For example, some jurisdictions require property owners with failing septic systems within a certain distance of a new sewer main to connect to the sewer.

Such impacts could affect residents as well as small and large businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small business owners were key stakeholders in the rulemaking advisory committee and the technical advisory committee. Their insights and experience were included in the formation of these rules. Additionally, the department

held a series of Community Conversations on Housing across the State which include hearing feedback from small business owners and other members of the public. Lastly, small businesses will have the opportunity to participate in public hearings held on the proposed rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

Description of proposed change: (Please attach any draft or permanent rule or ordinance) In 2019, the Oregon Legislature passed HB 2001, which established the requirement for medium, large, and metro cities to allow middle housing types in areas that are zoned for residential use and allow for the development of detached single-family dwellings. Cities may regulate the siting and design of middle housing in these areas, so long as the regulations do not, individually or cumulatively, cause unreasonable cost and delay to the development of middle housing. HB 2001 also creates a process by which a local government may make a request to the Department of Land Conservation and Development to delay the enactment of middle housing provisions and regulations in specific areas of the city that have and existing infrastructure deficiency or an expected infrastructure deficiency by December 31, 2023. The Department proposes Oregon Administrative Rules 660-046-300 through -0370 regarding the form and substance of a local government's application for a time extension to the required enactment of middle housing provisions.

Description of the need for, and objectives of the rule: The purpose of the rule is to establish the form and substance of the infrastructure-based time extension request application and review process as provided in Oregon Laws 2019, chapter 639 (HB 2001). OAR 660-046-0300 through OAR 660-046-0370 will address these requirements.

List of rules adopted or amended: OAR 660-046-0300 - 660-046-0370

Materials and labor costs increase or savings: The proposed rule is not anticipated to affect the cost of materials, labor, or other factors.

Estimated administrative construction or other costs increase or savings: The proposed rule is not anticipated to affect administrative construction or other costs.

Land costs increase or savings: The proposed rules establish a voluntary process by which a local government may choose to request an extension to the deadline for enacting middle housing land use regulations and comprehensive plan policies in areas that have significant infrastructure deficiencies.

In the analysis of the land costs associated with the development of a 1,200 square foot single family home on a 6,000 square foot lot, the proposed rules will have no direct impacts. However, if a local government is granted an extension to the deadline for enacting middle housing provisions through the optional process laid out in the proposed rules, a local government could take actions to finance infrastructure improvements. These finance mechanisms could include, but are not limited to increasing systems development charges, implementing Local Improvement Districts, or securing bonded funding, which would ultimately increase the cost of development for housing.

If the proposed rules prompt local governments to address infrastructure limitations that were precluding full use or additional development of the property under the existing regulations or otherwise making the area undesirable, this could enable housing development in locations that are currently constrained by those limitations. It could also slightly increase the land cost in those areas to reflect the greater development potential.

Other costs increase or savings: The proposed rules are not anticipated to affect other costs.

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

RULES PROPOSED:

660-046-0300, 660-046-0310, 660-046-0320, 660-046-0330, 660-046-0340, 660-046-0350, 660-046-0360, 660-046-0370

ADOPT: 660-046-0300

RULE SUMMARY: This rule outlines the purpose of the infrastructure-based time extension request (IBTER) process as provided in Oregon Laws 2019, chapter 639, section 4.

CHANGES TO RULE:

660-046-0300

Purpose of Infrastructure-Based Time Extension Request Process

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

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0310

RULE SUMMARY: This rule describes which local governments are eligible to submit an IBTER as provided in Oregon Laws 2019, chapter 639, section 4.

CHANGES TO RULE:

660-046-0310

Entities Eligible to Apply

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

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0320

RULE SUMMARY: This rule defines terms and phrases that are used in sections 660-046-0310 through 660-046-0370.

CHANGES TO RULE:

660-046-0320

Definitions

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

(1) "Acceptable service levels" means measures of public facility adequacy defined by common engineering standards of practice, adopted as a policy for a utility, identified by designated authority from the decision-making body of a local government, identified in an adopted utility master plan or special area utility plan, or as necessary to comply with state or federal law.¶

(2) "IBTER" means an infrastructure-based time extension request submitted by a local government for an extension of time to adopt land use regulations or amend a comprehensive plan as provided for under Oregon Laws 2019, chapter 639, section 4. ¶

(3) "Infill and redevelopment areas" means areas with lot sizes of less than one-half an acre that are zoned to allow detached single family dwellings and that are either vacant or developed with detached single family dwellings. ¶

(4) "Infrastructure" means urban water, sanitary sewer, stormwater, and transportation systems.¶

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

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

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

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

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

(7) "Time extension" is an IBTER as granted by the department. ¶

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

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

RULE SUMMARY: This rule describes parameters to guide local government preparation of IBTER applications.

CHANGES TO RULE:

660-046-0330

Parameters

(1) Infrastructure, as defined in OAR 660-046-0320(4) and as described in more detail in OAR 660-046-0340, is eligible as a basis for an IBTER application. An infrastructure deficiency is not significant if it would be addressed with infrastructure improvements required in conjunction with the development of a single-family dwelling.¶

(2) If a local government is currently unable to issue any new permits for residential development due to a jurisdiction-wide significant infrastructure deficiency, the local government must address that situation through the moratorium process provided in ORS 197.505 and ORS 197.540. The department will not approve IBTER applications that address this type of situation.¶

(3) If a local government intends to continue permitting new single family detached dwellings or other development allowed by the current zoning within the area that has a significant infrastructure deficiency while deferring middle housing development within the area, the local government shall demonstrate that the additional infrastructure demand created by middle housing development would cause an unacceptable service level of the infrastructure, or shall provide other valid justification for allowing other development in the subject area while prohibiting middle housing development until the significant infrastructure deficiency is addressed.¶

(4) For the purpose of estimating the additional impacts of middle housing development on infrastructure, the local government may assume the following increases in residential development that would create additional impacts upon an area that is significantly infrastructure deficient over the period ending December 31, 2023:¶

(a) The local government shall prepare the baseline estimate for the number of dwelling units per acre produced within a residential zoning district by following the process described in ORS 197.296(5)(a)(A). A local government may add units produced by middle housing allowances, as described in subsections (b) through (f) to estimate residential infrastructure demand within a specified area. A local government may include additional infrastructure demand from other existing uses within the service area, such as higher density housing, schools, businesses, industrial uses, or other uses to estimate a total infrastructure service demand within the area that has a significant infrastructure deficiency.¶

(b) Infill and redevelopment areas may assume a one percent increase in the number of dwelling units produced due to middle housing allowances within the specified residential zone(s), above the baseline estimate described in subsection (a) prior to adoption of middle housing allowances. If some types of middle housing are currently allowed in a residential zone, the local government must adjust the anticipated increase for that area to an estimated fraction of one percent representing additional housing production from the middle housing types that are not currently allowed.¶

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

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

(e) A local government located outside a metropolitan service district may provide a quantifiable validation by demonstrating an actual increase in residential dwelling units produced above the rates anticipated in subsections (b) and (c), within a zone that allows densities that are no higher than those that would be allowed with adopted

middle housing provisions. The evidence may be derived from an existing zone within the local government's jurisdiction, or from another local government within 25 miles of the subject local government. ¶

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

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0340

RULE SUMMARY: This rule specifies the circumstances that would justify a time extension based on infrastructure deficiencies for each infrastructure type.

CHANGES TO RULE:

660-046-0340

Infrastructure-Specific Application Thresholds

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

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

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

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

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

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

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

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

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

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

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

RULE SUMMARY: This rule describes the information and analysis required in an IBTER application, as well as the application deadlines as provided in Oregon Laws 2019, chapter 639, section 4.

CHANGES TO RULE:

660-046-0350

Application Submittal Timeline and Requirements

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

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

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

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

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

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

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

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

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

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

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

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

improvements.¶¶

(c) A vicinity map showing the boundary of the impacted areas for which the IBTER is requested. If the local government identifies more than one significant infrastructure deficiency (sewer and transportation, for example), the map should show the boundary of each deficiency separately and any areas of overlap.¶¶

(d) A regional map, if applicable, showing the significant infrastructure deficiency that otherwise provides service to the area where an IBTER is being requested.¶¶

(e) If the local government is subject to ORS 197.758(2), a description of the local government's plan for middle housing implementation in the impacted area, including identification of areas intended for duplex-only provisions, and, as applicable, standards to be applied in goal-protected and constrained areas, and areas intended to accommodate triplexes, quadplexes, townhomes, and cottage cluster developments. ¶¶

(f) A remediation plan that describes the proposed infrastructure improvement(s) intended to remedy the significant infrastructure deficiency so that the local government may implement middle housing provisions. For each infrastructure improvement project, the description should include, at a minimum:¶¶

(A) The proposed period of time needed to address the significant infrastructure deficiency, including phasing and contingencies, if applicable. ¶¶

(B) A discussion of the options initially considered for addressing the significant infrastructure deficiency, along with an explanation of how the proposed approach is the most expeditiously feasible approach available to address the deficiency.¶¶

(C) Explanation of how the improvement project will provide acceptable service levels to anticipated middle housing.¶¶

(D) Potential funding source(s), including funding commitments from other governmental agencies or private parties, and schedule for project completion.¶¶

(E) Depiction of the area that will be remedied by the project.¶¶

(F) Proposed timeline and associated mapping to demonstrate any phasing of the remediation plan where there are several improvement projects identified. ¶¶

(G) A map of all other areas within the local government where middle housing will be implemented during the extension period. ¶¶

(H) If a local government proposes a bond measure or similar financial mechanism that requires voter approval as a means to fund an infrastructure improvement project, a local government may also propose a contingency plan for funding the infrastructure improvement. ¶¶

(g) A narrative detailing how the application is in compliance with the Review Criteria in OAR 660-046-0360(3). In response to criterion in OAR 660-046-0360(3)(d), the local government shall provide a map of the local government's jurisdictional area, depicting US Census tract scores based on the Oregon Housing and Community Services Department's Notice of Funding Availability Scoring Criteria Map:

(<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=2cb211dbdd3d4cf497d8190283f1402f>). The map identifies census tracts within communities that score low, medium, or high in relation to access to opportunity. Those tracts identified as high opportunity areas have a relatively low poverty rate, high labor market engagement index, and a low unemployment rate. Low opportunity areas have a relatively high poverty rate, low labor market engagement index, and a high unemployment rate. The narrative addressing criterion in OAR 660-046-0360(3)(d) must refer to the mapped areas in relation to the review criterion.

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0360

RULE SUMMARY: This rule describes the IBTER review process and review criteria, including the review timelines provided in Oregon Laws 2019, chapter 639, section 4.

CHANGES TO RULE:

660-046-0360

Review Process and Review Criteria

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

(1) Review and decision-making authority. The department reviews IBTER applications for consistency with the review criteria and the procedural requirements in OAR 660-046-0360. The department will deny IBTERs that do not meet the review criteria or comply with the procedural requirements. The department Director is the decision-making authority for IBTER applications. ¶

(2) Review Period. Once the local government has filed a timely, complete IBTER application, the department will approve, approve with conditions of approval, or deny an IBTER. The department will issue a decision on an IBTER application as follows: ¶

(a) Within 90 days of receipt of a complete application for local governments subject to ORS 197.758(3); ¶

(b) Within 120 days of receipt of a complete application for local governments subject to ORS 197.758(2). ¶

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

(a) Whether the identified deficiency is a significant infrastructure deficiency, consistent with the parameters and infrastructure-specific thresholds established in OAR 660-046-0330 and OAR 660-046-0340. ¶

(b) Whether the IBTER application has adequately described and documented the identified significant infrastructure deficiency and has established a boundary for the requested extension area(s), as required by OAR 660-046-0350. The boundary for the requested time extension is a specific area where there is an identified significant infrastructure deficiency. ¶

(c) Whether the proposed remediation plan is effective and presents the most expeditiously feasible course of action to enable implementation of middle housing provisions. ¶

(d) Whether, in relation to the opportunity area map provided per OAR 660-046-0350(3)(g), the applicant has demonstrated that correction of the significant infrastructure deficiency will either help to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics, or at minimum will not serve to perpetuate these inequities. To assist with this evaluation, local governments may demonstrate that the IBTER application is consistent with a plan of actions over time by the local government and community partners that will reduce barriers to opportunity for all community residents, in all areas within the local governments' jurisdiction. ¶

(e) Whether the time period proposed for the IBTER is the minimum necessary to remedy the significant infrastructure deficiency ¶

(f) Any other criteria that the department determines are relevant. ¶

(4) The department may impose conditions in time extensions that it deems necessary to meet the approval criteria or to ensure the time extension is consistent with the intent of these rules, with ORS 197.758, and with Oregon Laws 2019, chapter 639, section 4.

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0370

RULE SUMMARY: This rule describes the allowed duration of approved time extensions, as well as requirements for the submittal and review of an amended remediation plan.

CHANGES TO RULE:

660-046-0370

Duration of Time Extension

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

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

(a) Whether the local government anticipated or reasonably should have anticipated the contingencies causing delay in the initial remediation plan; ¶

(b) Whether additional delay in the enactment of middle housing allowances is warranted; and ¶

(c) Whether the allowance for middle housing in the subject area would provide an opportunity for other parties to construct the necessary Infrastructure as needed in association with middle housing development. ¶

(3) Upon the expiration date of a time extension, the local government must either enact development code regulations implementing middle housing or apply the model code, as applicable, per OAR 660-046-0100 or OAR 660-046-0200.

Statutory/Other Authority: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

Statutes/Other Implemented: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4