

INFRASTRUCTURE-BASED TIME EXTENSION REQUEST TECHNICAL ADVISORY COMMITTEE MEETING PACKET #5



TO: Infrastructure-Based Time Extension Request Technical Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: IBTER Technical Advisory Committee Meeting Packet #5

Infrastructure-Based Time Extension Request Technical Advisory Committee Members,

Below, you will find information that will help you prepare for the Infrastructure-Based Time Extension Technical Advisory Committee (IBTERTAC) meeting scheduled for **May 6 from 9am-12pm**. *IMPORTANT NOTE: Due to public health concerns, this meeting will be held entirely over Zoom. Please do not plan to attend this meeting in person at the DLCD offices in Salem.* At the time of the event, please follow the Zoom link in the meeting calendar appointment. Zoom offers both a video conferencing option and a telephone option.

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.

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 IBTERTAC members will come to each meeting prepared, having read the materials and ready to discuss IBTER topics in detail.

The primary objectives for IBTERTAC5 are to:

1. Review Draft IBTER Rule Concepts,
2. Refine the tools and analysis used for the IBTER equity evaluation process, and
3. Discuss further the extension application requirements

Included in this packet are materials for your review that will further describe the purpose, contextual background, timeline of the rulemaking process, preliminary concepts and key considerations. Please review these documents prior to the meeting on **May 6 from 9am – 12pm**.

IBTERTAC Meeting Packet #5 Materials List:

Number	Packet Item	Page
1	Agenda	3
2	IBTERTAC4 Summary	4
3	Discussion Worksheet	16
4	Rule Concepts Memo	20

5	Online Tools to Inform Intra-City Equity Analysis	28
6	Public Comment Received	30

NOTE: We have provided a discussion worksheet as packet item #3. This worksheet will mirror the discussion anticipated during the meeting. Please use the worksheet to take down notes or formulate your questions for the project team. You can also use this to submit additional written feedback to the project team at the meeting.

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

Thank you,



Ethan Stuckmayer

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

Additional DLCD Staff Contacts for the Infrastructure-Based Time Extension Request TAC process:

Kevin Young, Senior Urban Planner
kevin.young@state.or.us
 503-934-0030

Casaria Taylor, Rules Coordinator and Point of Contact for All RAC Logistics
Casaria.taylor@state.or.us
 503-934-0065

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

Rulemaking Advisory Committee Charge:

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

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

**Infrastructure-Based Time Extension Request Technical Advisory Committee
Meeting #5**

May 6, 2020; 9:00 am - 11:00 am (may extend to 12:00 pm, if needed)

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

Infrastructure-Based Time Extension Request Technical Advisory Committee Meeting		
Time	Topic	Who
<i>8:50 - 9:00 am</i>	<i>Arrive and Test Zoom Settings</i>	<ul style="list-style-type: none">• TAC Members
<i>9:00 - 9:15 am</i>	Welcome, Opening Remarks, and Review Agenda	<ul style="list-style-type: none">• Ethan Stuckmayer, DLCD• Kevin Young, DLCD• Serah Breakstone, OTak
<i>9:15 - 10:50 am</i>	Draft IBTER Rule Concepts	<ul style="list-style-type: none">• Ethan• Kevin• Serah• TAC Members
<i>10:50 - 11:00 am</i>	Next Steps and Wrap Up	<ul style="list-style-type: none">• Ethan• Kevin

Infrastructure-Based Time Extension Request Technical Advisory Committee (IBTERTAC) Meeting #4
April 14, 2020; 9am – 11am
Zoom Virtual meeting

Key Insights

Stormwater System Constraints – Criteria for stormwater-based deficiencies will need to consider differing situations local jurisdictions face with regard to stormwater management, including regulatory compliance in light of changing statewide legal frameworks, varying terrain conditions of different geographies, legal liability, compliance with federal laws such as the Endangered Species Act, and how provisions in the model code and minimum standards affect stormwater impacts (e.g. impervious surfaces, lot coverage, etc.)

Stormwater Management for Middle Housing – There are elements related to development that could result in a greater impact to stormwater systems in comparison to single-family detached dwellings. In circumstances where middle housing produces more impervious surface as a result of frontage improvements or additional parking requirements, or on sites with steep grade, low-infiltration, or unstable conditions, on-site mitigation becomes more challenging and expensive. Additionally, DLCD should take a greater role in identifying infrastructure challenges to facilitating middle housing development statewide.

Ensuring Reasonable Regulation – It is important to ensure that regulations with a clear relationship to protecting health and safety of a community, such as fire code provisions and minimization of flooding risk, are not compromised in order to facilitate the development of middle housing.

Equity Considerations – While IBTER has a strong technical focus, it will be important to ensure that it does not provide the opportunity for cities to either enforce exclusionary policy or fail to invest in historically underinvested communities. The OHCS methodology for determining Census tracts at risk of gentrification and displacement will be helpful in identifying parcels with potential equity considerations, but providing clear direction for jurisdictions to consider equity will be important. This is also an important topic for the RAC to discuss in context of middle housing rulemaking.

Attendees:

- | | |
|--|-------------------|
| 1. Ethan Stuckmayer, senior housing planner, DLCD. | 11. Alexis Biddle |
| 2. Kevin Young, senior urban planner, DLCD. | 12. Ariel Nelson |
| 3. Robert Mansolillo, housing planner, DLCD. | 13. Chris Storey |
| 4. Samuel Garcia, housing planner, DLCD. | 14. Deedee Fraley |
| 5. Sean Edging, housing policy analyst, DLCD. | 15. Derrick Tokos |
| 6. Casaria Taylor, rules coordinator, DLCD. | 16. Ellen Miller |
| 7. Cazmine Bonnot, support staff, DLCD. | 17. Eric Engstrom |
| 8. Serah Breakstone, senior planner with Otak. | 18. Gareth Prior |
| 9. Margot Walker, Otak. | 19. Jeff Blaine |
| 10. Kevin Timmins, Otak. | 20. John Williams |
| | 21. Laura Kelly |
| | 22. Peggy Lynch |
| | 23. Tracy Rutten |

Meeting Minutes

Stormwater Memo

- Three anticipated issues
 - Lack of stormwater infrastructure
 - Frequent flooding
 - Lack of “downstream” stormwater capacity
- Review of federal regulatory framework – Primarily Clean Water Act: “fishable/swimmable”
- MS4 Permit – regulates stormwater quality discharged into waterways. Requires a plan for municipalities/service districts to demonstrate how they will reduce pollutants. Most require separate storm sewer systems. Only a handful have combined systems, with sanitary sewer and stormwater combined and treated.
- Safe Drinking Water Act – have additional requirements to ensure groundwater isn’t contaminated. DEQ has program to decommission dry wells which can contaminate other wells through runoff.
- State law and local standards
 - Oregon Drainage Law (common/case law): If there is a natural drainage course flowing downhill, the water should be able to flow downhill and owners cannot drastically change water course or volume and damage downstream property.
 - Local codes and design standards – Water quality and quantity elements are managed to control stormwater.
 - Likely that any middle housing would be required to do stormwater management as part of development. Typically, thresholds of disturbance are very minimal (e.g. 1,000 SF for Clean Water Services)
- Criteria for demonstrating a deficiency
 - Incremental impact from middle housing would not be significant in comparison to other development
 - All new development activity could exacerbate existing stormwater infrastructure
 - To prove middle housing specific would be very difficult – unlikely a town would be able to demonstrate this given the way drainage functions.
 - Steps jurisdictions would need to take:
 - Infill - Local gov’t shall provide a description of how existing infrastructure can meet needs of other development while deficiency is being corrected.
 - This may require hydrologic modelling.
 - In some cases, it may be well documented complaint records
 - In all cases, it will require demonstration about middle housing specific constraint
 - UGB Greenfield Development – In these cases, greenfield is planned from scratch including stormwater infrastructure, upgrades, and conveyance systems.
 - There really is no case for a stormwater deficiency
 - Downstream Stormwater Conveyance Constraint
 - Would require review of system-wide collection and conveyance system and modelling to demonstrate middle housing impact.

- “Source Control” can really help control impact and ensure new development is taking all steps to minimize stormwater runoff
 - Minimize impervious surface lot coverage
 - More vegetated surfaces
 - Low-impact design
- Jeff: Curious on staff perspective on managing lot coverage vs “unreasonable cost or delay” impact. How do you propose balancing the two?
 - Kevin: We don’t have a specific plan to address that issue. No intention to put into rule how local governments regulate lot coverage in relation to stormwater. With that said, you can build up and not out, which is a tactic used by jurisdictions to minimize lot coverage and impervious surfaces.
- Derrick: Relevant to point out that not all jurisdictions are subject to MS4 permits (e.g. Newport). Speaks to smaller jurisdictions w/o regulatory requirements may not have developed programs.
 - Discussion under Oregon Drainage Law – “Oregon Flow Law” 2014 Supreme Court Case from Lake Oswego (Bazzaz v. Howe, 262 Or. App. 519)
 - Take a look and incorporate to memo – it more clearly lays out drainage issues

Q1. Stormwater System Constraints

Three potential types of stormwater infrastructure deficiency. Are there others?

- Jeff: Suggest including category of regulatory compliance – Situation where we feel implementation will put at greater risk of regulatory noncompliance, would have ability to make that case. States can go beyond minimum defined in federal standard – DEQ has chosen to do that and trying to move to a general permit, currently in litigation. Also negotiating with Phase I communities regarding post-construction stormwater quality. Until defined, we will not know how all communities are impacted.
 - Kevin: We are discussing the increment imposed by middle housing. Is this a scenario that “breaks the camel’s back” in terms of regulatory compliance?
 - Jeff: Similar to sewer example, you may have a constraint that’s a bigger issue, where allowing greater density would increase incremental risk.
- Deedee: I know we are not looking at parking, but it will have impact on stormwater regarding impervious surfaces. Increases in parking will result in increases on stormwater impact.
 - Kevin: It will be adding impervious surface area to the site, unless pervious material used.
- Eric: Regulatory – Endangered Species Act. If there is a local stream with an endangered species, could affect risk with type of development located near that area.
 - Kevin: If continuing to issue permits for SFD, what is the argument about middle housing increment?
 - Eric: Assuming middle housing brings more impervious surfaces, could put at risk of ESA lawsuit.

Q2. Stormwater Constraints

Stormwater often address multiple issues. Do those multiple goals warrant distinct consideration as elements of an IBTER stormwater request?

- Jeff: Would suggest that they don't require additional distinction, so long as we have that regulatory compliance component.

Q3. Establishing a Significant Stormwater Deficiency

Have we provided needed clarity for demonstrating a deficiency?

- Gareth – Three questions about application parameters:
 - Would lack of curb and gutter be cause for an IBTER?
 - Kevin: Good question. Gets into the on-site improvement question. With any new development, typically requires stormwater upgrade to meet standards. Maybe there are other issues here?
 - Serah: If new middle housing is required to treat stormwater on site and you have lack of curb and gutters downstream – it would be hard to understand how middle housing is making that issue worse over a new SFD, because the middle housing would be required to deal with that stormwater runoff.
 - Gareth: Agree. Just looking for clarification.
 - Chris: Seen dialogue around stormwater infrastructure – could be a barrier to the cost of the middle housing. I don't want to put pressure on stormwater management in an effort to reduce expense.
 - Kevin: If a local gov't is comfortable to put these requirements on SFD, they should feel safe to place those on middle housing.
 - Pg 28 3e. "And other land use activities that may impact" – Seems very broad, would be good to get more specificity in application.
 - 3d or 3e – Including vicinity information around equity, transit, and jobs. So you have information to guide decision making. Referencing map that we agree upon for socioeconomic status of census tract.
 - Serah: Good question. Clarify that we should include equity information in this section.
- Derrick: No, I wouldn't view a duplex as creating more impervious surfaces, but other middle housing options certainly could. My comments come in the context of the rulemaking process. If it leads to a result where middle housing creates additional impervious surface, that would drive local jurisdictions to file for an IBTER through this process given their existing surface water system. They would have a potential liability. There may be liability to the state that's worth exploring.
 - Margot: If constraint is already known. The extension will provide additional time, wouldn't the jurisdictions put in place code requirements to mitigate impervious cover?
 - Derrick: Another way to approach is to accelerate their capital program to address issue in pipe system.
- Eric: Two thoughts
 - Distinction between SFD and duplexes – How cities handle street improvements. There may be additional impervious surfaces as street improvements happen. E.g. In lieu for SFD don't apply to middle housing types.

- Another way that some jurisdictions may be constrained is if they use underground injection methods to handle stormwater. That type of system functions under a different regulatory environment and set of rules.
 - Pipe vs infiltration – Some steep hilly neighborhoods would have an issue with frontage improvements. Can almost always engineer an on-site system for water quality and treatment, but disposal will be an issue if there isn't a pipe system in a constrained area. True today in SFD – when you add middle housing, it may add additional impervious surface.
 - Kevin T: Will need to think through this issue
- Jeff: Will come back to lot coverage issue. If communities aren't going to be prevented from limiting lot coverage, then it's a difficult case to make. If requirements set, then increases will create additional impact. Challenge of infill development on volume control, small orifice sizes and particles in water create maintenance issues.
 - Ethan: Lot coverage in large city requirements range from 100% to 150% coverage allowed for SFD – There is flexibility for local jurisdictions.

Onsite Mitigation

- Peggy: With many of these regulations – the whole purpose for regulating is to have clean water and not to have flooding. As we try to accommodate middle housing, want to ensure we don't forget why we have these regulations. "Cost" does not mean that we should preclude these regulations.
- Derrick: Our circumstance on coast with steep terrain makes on-site mitigation impractical. We certainly do not want developers putting water on unstable land. Where we (Newport) have done mitigation it is structural and quite expensive. Circumstances in the valley are not as appropriate in coastal terrain.

Fire Sprinklers

Agree that limitation of 30 dwellings before sprinklers should not be affected by middle housing?

- Peggy: Wrote a short note to TAC, just like discussion on stormwater. Requirements regarding emergency access relate to public health and safety. The standards should apply. Underlying issue is why we have these requirements in the first place.

Equity Metrics

OHCS tool to determine areas vulnerable to gentrification/displacement. How could this tool inform IBTER? Is this a concern with middle housing?

- Serah: To clarify, if we use this tool would we ask IBTER applicants to provide this information? Or is this an analysis that DLCD would do as part of their review
 - Kevin: We would want applicant to review this information and balance it in their applications, but don't necessarily need to show us something that's publicly available.
 - Serah: Make clear that they should use it in discussion
 - Garet: I agree with balancing. Could be more so addressed in a narrative and DLCD use it as part of evaluation.

- Garet: It's a good map, in comparison to Metro tool it is similar. Census tracts have pros and cons, but this has good consistency statewide. Purpose of this map is most informative is areas that aren't identified as vulnerable – these are areas where we want to see middle housing the most. If exception requested in area not vulnerable, will require specificity as to why the area should be allowed an extension.
 - Assumption that having access to middle housing in vulnerable areas would lead to gentrification is a large assumption and one that I don't know would hold true. Allowing middle housing can be an anti-gentrification tool as it allows existing residents greater revenue options
- Alexis: In terms of this type of consideration in IBTER, struggling to find how we would have an extension serve purposes of preventing gentrification when there needs to be a plan to ameliorate deficiency. Doesn't seem that a local gov't could come up with a plan that addresses this. We should have this discussion on the RAC.
 - Ethan: We would balance gentrification/displacement and historic disinvestment with approving an IBTER. Intent to ensure we are not perpetuating status quo.
- Eric: Similar tool as Portland did when deciding where to apply middle housing. Each jurisdiction will need to have discussion about the right answer, but that's the point – they should consider but that doesn't mean there's a correct answer on the map. Concern that if we commit resources to resolve a deficiency, are we pulling resources away from communities that have been historically disinvested?
- Serah: Wrapping equity into IBTER, this is an infrastructure-based extension. We are looking at impacts of middle housing on infrastructure – having a hard time understanding balancing equity within that when making decisions. Is there even a way to have an equity element because they are supposed to be strictly about infrastructure.
 - Kevin: This will be inherently discretionary and imprecise, but the intent is to not reinforce patterns of exclusion that have existed throughout Oregon. It's a fair housing lens. We want jurisdictions to provide an analysis about how this affects their community.
- Jeff: Suggest we would not incorporate proximity to transit/jobs in stormwater IBTER; rather, have a second component within (or not within) these areas – identify a series of questions that you would like those jurisdictions to answer centered on trying to address intentional or unintentional exclusion/problems created by IBTER request. Separate technical from qualitative and equity component. Key piece – don't kick it back to communities; identify key questions to do that screening.
- Peggy: Unlike discussion around IBTER, this really is a discussion for the broader RAC. What we don't want to see is areas where cities can add or exclude middle housing. Back to infrastructure, disinvestment should not lead to lack of middle housing. Pleased to hear there is this metric to help focus how we select “areas” to allow middle housing, not IBTER.
- Ethan: “the infrastructure based time extension request is a very technical exercise. What are the numbers and what are the projections and all that and it leads you to – it's a calculation that leads you to a number and then you compare that to a threshold and that's what sticks. But the equity piece is important in that. We're trying to make sure that we're not intentionally or unintentionally being exclusive which is wholly within the intent of the HB 2001 is to ensure that we do not kind of cross that line.”

- Kevin: I have just recently viewed another on-line tool shared by the Oregon Housing Community Services which we will look at our next meeting. The mapping tool identifies areas of opportunity. Its data pieces were things like: job accessibility for low and medium waged employees; high labor market engagement for the area; median income for the area; high performing elementary schools in the area; and the relative concentration of owners versus renters.

Key Parameters

Next step is to draft up a process for IBTER and conceptual rules. Rule language will not be available at next meeting, but framework for rules will.

- Peggy: I hope that separately there will be a report to DLCD in surveys to jurisdictions to get a better statewide understanding of statewide infrastructure needs and need for updates to CIPs. Water vision – ensure we have information about real need in our state regarding infrastructure. DLCD uses opportunity to gather this information.
- Jeff: We’ve talked about complications where infrastructure is responsibility of another jurisdictions. Is the intention of #4 is that the community state that? Is it beneficial to add language addressing that?
 - Serah: That’s the intent. Trying to get a service provider to sign off is not realistic. We wouldn’t anticipate this to be a barrier.
- Derrick: Not sure fire codes unduly limits middle housing. With exemption, make it clear that it means all dwellings off that point of access. When you have substantial number of dwellings without sprinkler access, they all must come into compliance with sprinkler requirements. It doesn’t target middle housing.

Test runs: We would like examples from jurisdictions of infrastructure constraints to test rules. Not looking for a huge amount of detail; looking for a description, map of area affected, and discussion of how local jurisdiction would plan to address that. Would like examples from both rural and urban areas.

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, April 15, 2020 8:46:55 AM
Last Modified: Wednesday, April 15, 2020 8:55:10 AM
Time Spent: 00:08:14
IP Address: 50.53.204.13

Page 1: IBTER TAC Meeting #4 Discussion Worksheet

Q1 Storm Water System Constraints – The stormwater memo identifies three potential types of stormwater infrastructure deficiencies: 1. Lack of stormwater infrastructure, 2. Frequent or persistent flooding, and 3. Downstream stormwater conveyance system constraint. Are there other types of stormwater infrastructure constraints that should be considered? Are there additional considerations that should be identified?

Respondent skipped this question

Q2 Stormwater Constraints – Unlike some other types of infrastructure, stormwater facilities are often required to address multiple issues, including removing contaminants from stormwater, controlling the rate and volume of stormwater release, and reducing the temperature of stormwater before returning it to natural water bodies. Do these multiple goals warrant distinct consideration as elements of an IBTER request for stormwater facilities?

Respondent skipped this question

Q3 Establishing a Significant Stormwater Deficiency – Does the framework for establishing a significant stormwater infrastructure deficiency provide all necessary clarity? Do you have specific concerns with the general parameters identified? Please provide any specific suggestions for clarification of language relating to establishing a significant stormwater infrastructure deficiency.

Respondent skipped this question

Q4 On-Site Stormwater Mitigation – Unlike some other types of infrastructure, it is possible for local governments to put in place requirements for on-site stormwater detention and treatment as a requirement for development or redevelopment. On-site mitigation can be required for small infill developments, where stormwater will be routed into an existing system; but is often required for larger greenfield developments that are better able to incorporate development-wide stormwater infrastructure to meet local government standards. To what degree should on-site mitigation factor into a stormwater IBTER request?

Respondent skipped this question

Q5 Other Considerations – Are there other considerations that should be identified in relation to stormwater infrastructure? If so, what are they, and how would you suggest addressing them in the rules?

Respondent skipped this question

Q6 The Key Links Document (Item #4 in the packet) includes a link to an online tool for identifying census tracts that are vulnerable to gentrification. What are your thoughts regarding using this tool to assess the equity impacts of IBTER requests? How might this tool be used for that analysis? Are there better (available) metrics and data that should be utilized in considering equity impacts?

Respondent skipped this question

Q7 The Key Parameters Memo (Item # 5 in the packet) summarizes draft parameters for IBTER requests. Do you have any concerns or questions regarding the identified parameters? In your opinion, are they consistent with the framework for IBTERs provided by HB 2001? Are there additional elements and clarifications that should be included, and if so, what are they?

Input is needed from the RAC on how to factor the LCDC charge for equity and removing barriers to housing affordability with HB2001 rulemaking. The IBTER process is relatively technical and prescriptive, therefore it will be important to have a checkpoint where an equity and affordability lens is applied, so that the IBTER outcome does not produce greater inequity or barriers to housing affordability. This may rise to the level of IBTER key parameters, be required as a part of the IBTER application, or live as separate rules for DLCD to review IBTER applications. Feedback from the RAC is needed to help guide our TAC. Thank you!

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, April 20, 2020 10:53:45 AM
Last Modified: Monday, April 20, 2020 11:58:19 AM
Time Spent: 01:04:33
IP Address: 208.71.202.1

Page 1: IBTER TAC Meeting #4 Discussion Worksheet

Q1 Storm Water System Constraints – The stormwater memo identifies three potential types of stormwater infrastructure deficiencies: 1. Lack of stormwater infrastructure, 2. Frequent or persistent flooding, and 3. Downstream stormwater conveyance system constraint. Are there other types of stormwater infrastructure constraints that should be considered? Are there additional considerations that should be identified?

Generally, these seem like the right categories, although it does seem that the suggestion to add a fourth category to cover broad "regulatory compliance" requirements is reasonable.

Q2 Stormwater Constraints – Unlike some other types of infrastructure, stormwater facilities are often required to address multiple issues, including removing contaminants from stormwater, controlling the rate and volume of stormwater release, and reducing the temperature of stormwater before returning it to natural water bodies. Do these multiple goals warrant distinct consideration as elements of an IBTER request for stormwater facilities?

I do not have technical expertise necessary to respond to this question in detail, but would generally recommend that we minimize the amount of analysis a jurisdiction will need to provide for an IBTER. This level of detail seems like it might be unnecessary.

Q3 Establishing a Significant Stormwater Deficiency – Does the framework for establishing a significant stormwater infrastructure deficiency provide all necessary clarity? Do you have specific concerns with the general parameters identified? Please provide any specific suggestions for clarification of language relating to establishing a significant stormwater infrastructure deficiency.

Generally, these seem reasonable. One concern is specific to UGB expansion areas. As it has been noted, UGB expansion areas can be planned in advance to accommodate the densities and number of units expected from middle housing; thus the infrastructure can be sized accordingly. While this is likely to be true for some UGB expansions, particularly new expansions, this is not necessarily the case for older UGB expansions which may be phased or delayed. These areas may already have massive amounts of infrastructure in place, in anticipation of development of a certain number of residential units. So it should not be assumed that that infrastructure is sized for, or could easily be re-sized for, additional units resulting from implementation of HB 2001. This is not to suggest that IBTER is necessarily going to be the right tool for all of these situations, but that the assumption that UGB expansion areas can easily accommodate higher unit counts by simply planning for increased infrastructure capacity may not always be true.

Q4 On-Site Stormwater Mitigation – Unlike some other types of infrastructure, it is possible for local governments to put in place requirements for on-site stormwater detention and treatment as a requirement for development or redevelopment. On-site mitigation can be required for small infill developments, where stormwater will be routed into an existing system; but is often required for larger greenfield developments that are better able to incorporate development-wide stormwater infrastructure to meet local government standards. To what degree should on-site mitigation factor into a stormwater IBTER request?

I agree with the concern that any assumptions about what a jurisdiction is able to regulate in terms of lot coverage (i.e. reduction of impervious surface) and on-site mitigation requirements need to sync with the model codes under development.

Q5 Other Considerations – Are there other considerations that should be identified in relation to stormwater infrastructure? If so, what are they, and how would you suggest addressing them in the rules?

Respondent skipped this question

Q6 The Key Links Document (Item #4 in the packet) includes a link to an online tool for identifying census tracts that are vulnerable to gentrification. What are your thoughts regarding using this tool to assess the equity impacts of IBTER requests? How might this tool be used for that analysis? Are there better (available) metrics and data that should be utilized in considering equity impacts?

I find myself struggling with this concept on many levels. First, even as a group of professionals, we continue to express very different opinions about whether infrastructure investment in census tracts vulnerable to gentrification is a good thing because it may resolve some chronic under-investment issues, or a bad thing because it is likely to lead to gentrification and displacement of vulnerable populations. If we cannot even agree on this fundamental issue, how can we possibly ask DLCD to consider this in an IBTER request? Second, tools such as these are typically used in funding decisions as they help a funding agency determine how to ensure the geographic and socioeconomic equity of investments by advancing geographies that may not otherwise be competitive for project funding. In the case of an IBTER, DLCD will not be making funding decisions- the jurisdiction and/or agencies will. DLCD will be asked to determine whether an area has a legitimate infrastructure deficiency. This is a yes or no question that will be based on technical analysis of the deficiency itself and the jurisdiction's plan to resolve it. Even with an approved IBTER, a jurisdiction must still resolve the infrastructure issue within a (still to be determined, but likely) very short time frame. Accordingly, I fail to see how information about gentrification-vulnerable areas would be useful to DLCD in determining whether to grant an IBTER request. In fact, denial of an IBTER request solely on the grounds that it either did or did not- see concern #1- impact a gentrification-vulnerable area would be at odds with the entire purpose of the IBTER process.

This is not to say that data about gentrification-vulnerable areas has no place in infrastructure planning. In fact, I believe it is an important component. But it is information that should be evaluated in planning for infrastructure, by each agency and jurisdiction responsible for those funding decisions, and should relate to their other anti-displacement policies. As such, one solution may be to ensure every jurisdiction is provided information about their gentrification-vulnerable areas, perhaps as part of a set of best practices for infrastructure planning. This may be accompanied by some suggestions for anti-displacement policies and strategies.

But I strongly oppose adding this to the IBTER process, even as an informational item. It was suggested that the application could require a jurisdiction to submit a qualitative analysis of how delaying middle housing/infrastructure improvements might impact equity. Again, this has no place in an IBTER request. How could DLCD possibly make a determination on this subject? What would the criterion look like?

It may be worth further discussion to explore one TAC member's suggestion of keeping the equity discussion out of IBTER, but referring it to the RAC to see if it makes sense to consider as part of their determination of which "areas" could be eligible for- or excluded from- middle housing allowances.

INFRASTRUCTURE-BASED TIME EXTENSION REQUEST

Q7 The Key Parameters Memo (Item # 5 in the packet) summarizes draft parameters for IBTER requests. Do you have any concerns or questions regarding the identified parameters? In your opinion, are they consistent with the framework for IBTERs provided by HB 2001? Are there additional elements and clarifications that should be included, and if so, what are they?

Yes, although it doesn't seem as though we've fully resolved the issue about how to deal with infrastructure deficiencies for infrastructure the jurisdiction does not control or for which funding cannot possibly be procured within the required timeframe. Is there a way we can let those jurisdictions know what recourse and/or resources they have in such a situation?

INFRASTRUCTURE-BASED TIME EXTENSION REQUEST TECHNICAL ADVISORY COMMITTEE MEETING PACKET #5



TO: Infrastructure-Based Time Extension Request (IBTER) Technical Advisory Committee Members

FROM: Kevin Young, Senior Urban Planner

SUBJECT: IBTERTAC Meeting #5 Discussion Worksheet

Infrastructure-Based Time Extension Request Committee Members,

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

As you review the meeting packet contents prior to our meeting on May 6, 2020, please use this worksheet to take down notes or to formulate your questions for the project team. Due to limited discussion time at our meetings, please submit this as additional written feedback to the project team at the meeting as you see fit. Committee members will also be sent a link to a fillable version of this discussion worksheet as to collect additional questions or comments that may not have been expressed during the meeting.

Thank you,



Kevin Young

Senior Urban Planner | Community Services Division

Oregon Department of Land Conservation and Development

635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540

Direct: 503-934-0030 | Cell: 503-602-0238 | Main: 503-373-0050

kyoung@dlcd.state.or.us | www.oregon.gov/LCD

IBTERTAC Meeting Packet Item #5: IBTERTAC #5 Discussion Worksheet

Rule Concepts Memo – IBTERTAC Meeting 5 will be dedicated to the review of the Rule Concepts Memo (Packet Item #4). Consequently, this discussion worksheet provides an opportunity to provide comments or questions on each section of the memo.

[#1] Purpose – Questions, comments, or needed clarification?

[#2] Applicability – Questions, comments, or needed clarification?

[#3] Definitions – Questions, comments, or needed clarification?

[#4] Parameters for IBTER applications – Questions, comments, or needed clarification?

[#5] Infrastructure-specific IBTER application thresholds – Questions, comments, or needed clarification?

[#6] Application Submittal Timeline and Requirements – Questions, comments, or needed clarification?

[#6b] On-Line Tools to Inform Intra-City Equity Analysis – What are your thoughts regarding the use of the on-line mapping tools to assess equity impacts provided in Packet Item # 4? Are there other resources or data that should be considered?

[#7] Review Process and Approval Criteria – Questions, comments, or needed clarification?

[#8] Time Limits for IBTERs – Questions, comments, or needed clarification?

Additional Comments

INFRASTRUCTURE-BASED TIME EXTENSION REQUEST TECHNICAL ADVISORY COMMITTEE MEETING PACKET #5



TO: Infrastructure-Based Time Extension Request (IBTER) Technical Advisory Committee Members

FROM: Kevin Young, Senior Urban Planner, DLCD

Serah Breakstone, Senior Planner/Project Manager, OTAK, Inc.

SUBJECT: Draft Infrastructure-Based Time Extension Request Rule Concepts

Below is the first complete draft of concepts for the administrative rules that will be developed regarding the IBTER process. For the purposes of IBTERTAC Meeting #5 on May 6, 2020, the focus of discussion should be at the conceptual level. It should be noted where concepts are unclear or where more clarification is needed, but a detailed review of the specific language, grammar, etc. is not warranted at this time. At the next meeting of the IBTERTAC on May 28, 2020, we will be reviewing draft administrative rules, with a closer emphasis on specific wording.

1. Purpose

- a. The purpose of this section is to prescribe submittal requirements, required data and analysis, the evaluation process, and applicable criteria for infrastructure-based time extension requests (IBTERs) as provided in Oregon Laws 2019, chapter 639. OAR 660-046-XXXX to OAR 660-046-XXXX establish standards related to the IBTER application and review process.

2. Applicability

- a. Local governments, as defined in OAR 660-046-0010, may apply for the approval of infrastructure-based time extensions to allow a delay in the enactment of middle housing allowances within defined areas with infrastructure constraints that would be exacerbated by middle housing development.

3. Definitions

- a. In addition to the definitions in OAR 660-046-0020 and in ORS 197.015 and 197.758, the following definitions apply specifically to IBTER applications:
 1. “Greenfield Development” means the development of vacant property, with little or no prior residential development. Consistent with OAR 660-024-0050(2)(a), development of a property one-half acre in size or larger occupied by a single dwelling, or development of larger properties with a gross density of two units per acre or less, shall be considered “Greenfield Development.”
 2. “IBTER” means infrastructure-based time extension request, which is the process described in Sections 1 – 8 of this document for local governments to apply for approval of requests to delay enactment of middle housing allowances within defined areas with

infrastructure constraints that would be exacerbated by middle housing development in areas zoned to allow detached single-family dwellings.

3. "Infill" means the development of vacant property less than one-half acre in size within previously built areas. These areas are already served by public infrastructure.
4. "Public Infrastructure" as the term is used in OAR 660-046-0300 - -03XX, means, publicly owned and operated water, sanitary sewer, stormwater, and transportation infrastructure systems.
5. "Redevelopment" means converting an existing single-family detached dwelling into another housing type with additional units, or demolishing an existing single-family detached dwelling and constructing another housing type with additional units, on property less than one-half acre in size. An example would be converting a single-family detached dwelling into a duplex.
6. "Service Levels" shall be defined by common engineering standards of practice, adopted levels of service or as a policy for a utility, established for an identified localized deficiency in an adopted utility master plan, or as necessary to comply with State or Federal rules.
7. "Significant infrastructure deficiency" means:
 - i. An existing significant infrastructure deficiency occurs when a local government or service provider (if outside the local government jurisdiction) is unable to provide defined minimum service levels within a developed, or developing, area zoned to allow single-family detached dwellings..
 - ii. An anticipated significant infrastructure deficiency occurs when a local government or service provider anticipates that it will be unable to provide acceptable service levels within a specified area by December 31, 2023, based either on extrapolated current development rates alone, or based on extrapolated current rates and additional anticipated middle housing development. See Section 4.g regarding anticipated redevelopment rates.

4. Parameters for IBTER applications

- a. The purpose of the IBTER application is for DLCDD to determine if a city may delay the enactment of middle housing provisions that would otherwise be required by OAR 660-046-0105 or OAR 660-046-0205. The justification for delayed enactment must be based on an identified infrastructure constraint within a defined area where additional housing units would exacerbate an existing or anticipated service deficiency that is occurring, or is anticipated to occur by December 31, 2023.
- b. Infrastructure systems that are eligible as a basis for an IBTER application are limited to Public Infrastructure, as defined in Section 3.
- c. Other than portions of counties within a metropolitan service district that are provided with sufficient urban services, lands outside a city's limits (but inside a UGB) are not eligible for an extension.
- d. If a local government is currently unable to issue any new permits for residential development due to a localized or citywide infrastructure constraint, that situation should be addressed through a moratorium process as outlined in ORS 197.505 and 197.540. IBTER applications will not be accepted to address this type of situation.

- e. If the local government currently permits the development of new single detached dwellings within the constrained area, the local government must demonstrate that the additional infrastructure demand created by middle housing development would lead to exceeding the minimum service level of the infrastructure system, or must provide other valid justification for allowing single-family detached dwellings in the subject area while prohibiting middle housing development until the infrastructure constraint is addressed.
- f. IBTER requests shall demonstrate that the identified infrastructure deficiency cannot be addressed as a required improvement in conjunction with middle housing development. In this context, “Rough proportionality” arguments may be provided to demonstrate that necessary infrastructure improvements would be disproportionate to the anticipated impacts of a proposed middle housing development.
- g. For the purpose of estimating the additional impacts of middle housing development on infrastructure systems, the local government may assume the following increases in residential development within the infrastructure-constrained area over the period ending December 31, 2023:
 - 1. A 1% increase in the number of dwelling units as a result of middle housing Infill or Redevelopment in previously developed areas.
 - 2. A 3% increase in the number of dwelling units (above historic residential dwelling unit production within the same zone) in Greenfield Development areas.
 - 3. The local government may project an increase in anticipated middle housing residential development above the thresholds identified in subsection (1) or subsection (2) if the local government can produce 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 (4). For local governments within a metropolitan service district, the standards for demonstration of a quantifiable validation are provided in subsection (5).
 - 4. A quantifiable validation for a local government located outside a metropolitan service district is a demonstration that the higher assumed housing rate anticipated from middle housing development has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction within 25 miles of the local jurisdiction. In other words, the local government must demonstrate an actual increase in residential dwelling units produced above the rates anticipated in subsections (1) and (2) above, within a zone that allows densities that are no higher than would be allowed with adopted middle housing provisions. The evidence may be provided from an existing zone within the local government’s jurisdiction, or from another local government within 25 miles of the subject local government.
 - 5. A quantifiable validation for a local government located inside a metropolitan service district is a demonstration that the higher assumed housing production rate anticipated from middle housing development has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local government’s jurisdiction or elsewhere within the metropolitan service district. In other words, the local government must demonstrate an actual increase in residential dwelling units produced above the rates anticipated in subsections (1) and (2) above, within a zone

that allows densities that are no higher than would be allowed with adopted middle housing provisions. The evidence may be provided from an existing zone within the local government's jurisdiction, or from another local government within the metropolitan service district.

5. Infrastructure-Specific IBTER Application Thresholds. This section describes scenarios for each infrastructure type that may be used to justify an IBTER.

- a. Transportation. The following scenarios may be considered justification for a transportation IBTER application:
 - i. Areas where the supporting roadways and/or intersections are operating at or over capacity, not meeting currently acceptable operating standards or mobility targets (level of service, volume to capacity ratio, etc), or have existing geometric/safety limitations. This applies only to areas where mitigation is feasible, planned, and within the scope and financial capacity of the local government.
 - ii. Areas that lack adequate emergency vehicle access per current adopted Fire Code standards, and for which mitigation in conjunction with development is not feasible.
- b. Stormwater. Applicants must evaluate the potential for proportionate on-site mitigation improvements to address identified stormwater system constraints. If on-site mitigation requirements would not be possible or proportionate to anticipated system impacts, the following scenarios could be considered justification for a stormwater IBTER application:
 - i. Lack of stormwater infrastructure such as storm drainage pipes, curb and gutters, catch basins and inlets, lateral storm connections and discharge outfalls.
 - ii. Downstream stormwater conveyance system constraint such as localized ponding or flooding and storm pipe back-ups caused by pipes, culverts, or catch basins in disrepair; high groundwater; compacted underlying soils; or backwater from nearby waterways during high flows.
 - iii. Existing regulatory compliance issues that would be exacerbated by additional middle housing units. In this context, "regulatory compliance" means that additional middle housing development is anticipated to trigger or contribute to exceeding limits for stormwater established by state or federal regulations and/or permitting. Documentation is required from the regulatory agency that anticipated impacts from middle housing would have a significant negative impact on compliance with the applicable requirements.
- c. Water and sewer. For water and sanitary sewer IBTER applications, the following scenarios may be considered justification for an IBTER:
 - i. A localized (not citywide) water source deficiency that limits the ability of the local government or service provider to meet water demand.
 - ii. A localized (not citywide) water or sanitary sewer infrastructure deficiency that limits the ability of the local government or service provider to extend or maintain adequate service levels and treatment for water and sewer. For example, the Oregon Health Authority requires that all water suppliers maintain a pressure of at least 20 pounds per square inch (PSI) at all service connections at all times (OAR 333-061-0025).

- iii. For sanitary sewer, a combined sewer/stormwater system that may exceed capacity as a result of new middle housing units.
- iv. Existing regulatory compliance issues that may be exacerbated by additional middle housing units. In this context, “regulatory compliance” means that additional middle housing development is anticipated to trigger or contribute to exceeding limits for water or sanitary sewer systems established by state or federal regulations and/or permitting. Documentation is required from the regulatory agency that anticipated impacts from middle housing would have a significant negative impact on compliance with the applicable requirements.

6. Application Submittal Timeline & Requirements

- a. IBTER applications must be filed with DLCD by:
 - i. December 31, 2020 for Medium Cities
 - ii. June 30, 2021 for Large and Metro Cities and portions of counties with sufficient urban services within a metropolitan service district.
- b. Required submittal materials. IBTER applications shall include, at a minimum, the following information in order to be deemed complete for review and processing:
 - i. A narrative providing a general description of the existing or anticipated deficiency, including:
 - 1. A description of the impacted infrastructure and the current system capacity
 - 2. A description of the current or anticipated infrastructure system constraint. 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 system is only expected to exceed capacity based on additional impacts from middle housing development.
 - 3. Assumptions used to calculate or estimate system capacity
 - 4. Documentation of the deficiency, including (but not limited to) maintenance and complaint records, photographs, modeling results (if available), applicable regulatory compliance issues, a deficiency documented in an adopted utility master plan, or other evidence of deficiency.
 - ii. If the local government believes the deficiency impacts middle housing but no other types of development within the impacted area, and plans to continue issuing permits for other types of development within the area, the local government must provide a detailed analysis of how existing infrastructure can continue to meet the needs of other types of development but not middle housing.
 - iii. The name of the service provider if the infrastructure is owned/operated by an outside agency, along with a description of any agreements between the local government and service provider for infrastructure system improvement.

- iv. Vicinity map showing the boundary of the impacted areas for which the IBTER is requested. If more than one infrastructure deficiency is identified (sewer and transportation, for example), the map should show the boundary of each deficiency separately and any areas of overlap.
- v. A summary of the parcels within the impacted area boundary, including occupied and vacant parcels, zoning and identification of Greenfield Development areas and areas that would be subject to Infill and Redevelopment, per the definitions in Section 3.
- vi. 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.
- vii. A regional map, if applicable, showing the infrastructure that otherwise provides service to the area where an IBTER is being requested.
- viii. Equity indicators – Provide mapping of your entire jurisdiction, indicating the location of the area where an extension is being requested, from the following mapping tools:
 - 1. Areas Vulnerable to Gentrification,
at: <https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=e1b0eda68ba04f189e2fc6cf827a9ce4>
 - 2. Opportunity Areas,
at: <https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=2cb211dbdd3d4cf497d8190283f1402f>
 - 3. Mapping of areas served by any identified High Performing Elementary Schools within the jurisdiction. High Performing Elementary Schools in Oregon are identified here: <https://www.greatschools.org/oregon/>
 - 4. Provide a narrative addressing the equity criteria identified in Section 7.
- ix. Specify the duration of the extension requested in order to remedy deficiencies and implement middle housing. Provide an explanation of how the proposed remediation is the most expeditious feasible approach available to address the identified infrastructure constraint.
- x. A mitigation plan that describes the proposed infrastructure improvement(s) intended to remedy the service deficiency so that middle housing may be implemented. For each infrastructure improvement project, the description should include, at a minimum:
 - 1. Explanation of how the improvement project will provide adequate service to anticipated middle housing
 - 2. Potential funding source(s) and schedule for project completion

3. Area within the extension boundary that will be remedied by the project
 4. Proposed timeline and associated mapping to demonstrate any phasing of the remediation plan where there are several improvement projects identified. For example, a smaller improvement project may take two years and will remedy one portion of the extension boundary but not the entire area. A second project may be larger, take longer, and remedy a larger area within the extension boundary.
 5. A vicinity map of other areas within the local government where middle housing will be implemented during the extension.
 6. If a bond measure or similar financial mechanism that requires voter approval is proposed as a means to fund an infrastructure improvement project, applicants shall include alternative method(s) that may be utilized if the public vote fails.
 7. Infrastructure improvement projects that are a condition of development cannot be proposed as part of a remediation plan.
- c. Completeness review. Upon receipt of an IBTER application, DLCDD will conduct a preliminary completeness review within 30 days of receipt and notify the local government of any additional materials that are required to make a complete application. The local government must submit all requested materials within 60 days of receipt of request for additional materials. If requested completeness materials are not submitted within the 30-day period, the application will be voided.

7. Review Process & Approval Criteria. IBTER applications will be reviewed as outlined below.

- a. Review and decision-making authority. IBTER applications will be reviewed for consistency with the approval criteria by DLCDD, with the assistance of technical consultants. The DLCDD Director will be the decision-making authority for IBTER applications.
- b. Once a complete application has been filed, DLCDD will grant or deny the request as follows:
 - i. Within 90 days of receipt of a complete application for medium cities
 - ii. Within 120 days of receipt of a complete application for large cities
- c. Review Criteria. In reviewing IBTER applications, DLCDD will consider the following criteria:
 - i. The identified deficiencies are consistent with the parameters and thresholds established in Sections 4 and 5 above.
 - ii. The applicant has adequately described and documented the identified deficiency(ies) and a boundary for the requested extension area(s) has been established.
 - iii. The proposed remediation plan is feasible and presents the most expeditious course of action to enable implementation of middle housing as quickly as possible.

- iv. Approval of the IBTER application will not exclude middle housing from a significant portion of the identified Areas of Opportunity within the local government boundary, nor result in concentrating middle housing in Areas Vulnerable to Gentrification within the local government boundary.
- d. DLCD may establish reasonable conditions of approval for IBTER approvals if deemed necessary to comply with approval criteria.

8. Time limits for infrastructure-based time extension requests:

- a. At the time of submittal of an IBTER application, the local government must specify the length of the extension requested in order to remedy deficiencies and implement middle housing. The applicant may provide a detailed and phased timeline for implementation, and may propose contingent timelines, dependent upon circumstances outside the control of the local government. However, DLCD may apply conditions of approval limiting time extensions, as deemed necessary.
- b. Upon the expiration date of an extension, the local government must either enact development code regulations implementing middle housing within the IBTER area, or shall apply the model code within the IBTER area, as applicable from OAR 660-046-0100 or -0200.

INFRASTRUCTURE-BASED TIME EXTENSION REQUEST TECHNICAL ADVISORY COMMITTEE MEETING PACKET #5



TO: Infrastructure-Based Time Extension Request Technical Advisory Committee Members
FROM: Kevin Young, Senior Urban Planner
SUBJECT: Online Tools to Inform Intra-City Equity Analysis

Areas Vulnerable to Gentrification – Scoring based on five variables by census tract:

<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=e1b0eda68ba04f189e2fc6cf827a9ce4>

- 1) HUD's 2019 Qualified Census Tracts (see below),
- 2) Concentration of People of Color – from ACS 5-year estimates. If non-white population is greater in the tract than the region.
- 3) Concentration of Less Formal Education – from ACS 5-year estimates. If percentage of population that obtained a high school degree or below is greater in the tract than the region.
- 4) Concentration of Renters – from ACS 5-year estimates. If the percentage of housing units that are rented is greater in the tract than the region.
- 5) Opportunity Zones – Designated by the U.S. Dept. of the Treasury

Areas of Opportunity – Scoring based on five variables, using American Community Survey 5-Year Estimate data, unless otherwise noted:

<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=2cb211dbdd3d4cf497d8190283f1402f>

- 1) Job Accessibility for Low and Median Wage Employees – If the ratio of low and median wage jobs to labor force was higher in the tract than in the region.
- 2) High Labor Market Engagement – If the labor market engagement index is higher in the tract than in the region.
- 3) Median Income – If the median household income is higher in the tract than in the region.
- 4) Concentration of Owners – If the percentage of owner-occupied housing units is greater in the tract than in the region.

5) High Performing Elementary Schools – Derived from the 2019 GreatSchools Summary Rating – scores based on how well students are prepared for post-secondary education. OHCS considers a score of 7 or above (on a scale of 1 – 10) to be a high performing school.

For more information on GreatSchools in Oregon: <https://www.greatschools.org/oregon/>

HUD Low-Income Housing Tax Credit Qualified Census Tracts – at least 50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or a poverty rate of at least 25 percent.

https://www.huduser.gov/portal/sadda/sadda_qct.html

Infrastructure-Based Time Extension Request Technical Advisory Committee Meeting #5

May 6, 2020; 9:00 am – 12:00 pm

Department of Land Conservation and Development (DLCD)

Zoom Virtual Meeting



Public Comment Summary April 7 – April 29, 2020

Date	Commenter	Commenter Type	Comments Summary	Comment Type
4/7/2020	Theresa Cherniak	RAC	<p>Includes a series of recommendations to the Model Code including:</p> <ul style="list-style-type: none"> - Purpose: Clarify singular "duplex" instead of "duplexes" and add "infrastructure" in the alternative approaches - Definitions: Recommends narrowing the proposed wording for "unreasonable cost or delay" - Definitions: Recommends adding "primary" to the duplex definition and removing the reference to ADUs - Definitions: Question about how "zoned for residential use" applies in jurisdictions with a unified comp plan/zoning map - Applicability: Language suggestions to the alternative approaches - Development and Design Standards: Language suggestions - Public Works Standards: Indicate C&O standards applicable to single family dwellings applies to duplexes and that many cities do not control public works - Minimum lot Size: Considers that minimum lot size should not be included in the model code per LUBA No. 2019-115 - Off-street parking: Recommends addressing parking on a per unit basis and allowing jurisdiction to impose additional parking requirements. 	Letter
4/8/2020	Rebecca Small	Staff	Letter advocates allowing the provision of detached tri- and quad-plexes to provide additional flexibility for middle housing development.	Letter



4/9/2020	Lynne McConnell	RAC	Encourages the following revisions to the Medium Cities Model Code and Administrative Rules and to carry changes to the Large and Metro Cities Model Code: <ul style="list-style-type: none"> - Revise duplex definition to allow for attached/detached duplex dwellings (and follow suit for tri and quadplexes) - Delete reference to Accessory Dwelling Units in the duplex definition - Define "conflict" between the rules/model code an local code - Define what it means to "consider" measures required in OAR 660-046-0030(2) 	Letter
4/9/2020	Heather Richards	RAC	Information on the average duplex size over the past ten years for duplexes permitted in McMinnville.	Email
4/10/2020	Kimberli Fitzgerald	RAC	A letter from Salem Planning Staff providing comments on the most recent draft of the model code and administrative rules. General comments: <ul style="list-style-type: none"> - Suggests clarifying "detached single-family dwelling" to ensure it includes Accessory Dwelling Units - Indicates that current definition of "unreasonable cost or delay" would preclude the application of reasonable standards for tri- and quadplexes Goal 5 - Historic Resources: <ul style="list-style-type: none"> - Suggests clarifying "unreasonable cost or delay" definition with the provision of goal exception language - Suggests the provision of language in the model code for properties listed on the National Register of Historic Places 	Letter
4/12/2020	Mike Reeder	Public	Provides clarification on the existing legal framework for "unreasonable cost or delay". In general, it is: <ul style="list-style-type: none"> - Essentially ignored by local governments and practitioners - Overshadowed by the "clear and objective" requirement - Difficult to apply; it requires fact-based analysis to determine He believes it should be applicable to standards/procedures which add cost without serving a compelling purpose (e.g. a tree inventory without preservation requirements)	Email

4/13/2020	Peggy Lynch	RAC	Testimony on IBTERTAC Meeting 4 Packet Materials. Suggests ensuring fire and life safety standards remain effective. Recommends broader conversation on the RAC regarding equity in relation to underinvested areas. Also recommends incorporating HPS Strategies to address infrastructure deficiencies.	Email
4/20/2020	Peggy Lynch	RAC	Recommends allowing jurisdictions to select areas higher-level middle housing may be sited. Question as to whether constrained lands and infrastructure-deficient areas are the only criteria that can be used to exclude middle housing from areas. Additionally, asks how an issue raised by Washington County regarding allowing some building on a lot they would otherwise not allow is addressed in rule.	
4/21/2020	Kimberli Fitzgerald	RAC	Includes questions and comments from City of Salem staff including: - Desired clarification for minimum compliance for design standards for tri- and quad places - Model code includes impervious surfaces in lot coverage in calculations - could impose barriers. - Clarify what "other criteria" in the applicability section refers to with regard to where tri- and quadplexes are located - The Model Code indicates a minimum lot size that is no less than that of SFD, clarify it's relationship with minimum lot standards that cities could impose. - "Unreasonable cost and delay" definition would preclude newly adopted design standards for tri- and quadplexes - Clarify in applicability whether middle housing can be converted into another middle housing type.	



April 7, 2020

TO: Ethan Stuckmayer, Senior Housing Planner

FROM: Theresa Cherniak, Principal Planner

SUBJECT: COMMENTS ON DUPLEX MODEL CODE AND OARS

Thank you for the opportunity to participate on the Rulemaking Advisory Committee and to comment on the draft Duplex Model Code language for Medium Cities and proposed OARs. Many of these comments have been made at the RAC or TAC meetings, but I wanted to get them into the record and provide final comments before this moves forward to the Commission. Most are in the form of suggested track changes, though some include further comments and questions. They are organized by section, based on the March 23, 2020 version of the documents. I am happy to talk further about any of the suggestions should clarification be needed.

Model Code

A. Purpose:

Should read: “...a duplexes on a lots which allows a detached single family dwellings.” HB2001 talks about a duplex, not multiple duplexes. Terms can be confusing and misused if not properly framed. The plural could be taken to mean that multiple duplexes would be allowed on a lot, which isn’t the intent of staff or of HB2001.

Alternative approaches 1., add as follows “...with lower transportation, infrastructure, and public service costs.”

B. Definition: Unreasonable cost and delay

This is a tough concept to define in a clear and objective way and will definitely be different for a duplex versus the remaining types of middle housing. This definition should just reference a duplex, as worded it applies to all middle housing and to an entire development of duplexes, which is different from a duplex. Additionally, further thought should be given to defining what would be considered a “burden” – unfortunately I don’t have a great suggestion but do have concerns with the terminology. Suggested rewording is as follows:

*“Unreasonable cost and delay means any standard, approval criteria or process that imposes **additional burden** upon development of middle housing a duplex development above the **burden** placed upon development of a single family detached dwelling development in the same zone.”*

B.2. Definition: Duplex.

I continue to recommend that “primary” be inserted, “...*a detached structure on a lot or parcel that is comprised of two primary dwelling units...*”

If this term is inserted, there is no need for the additional language about ADU’s, though the two could live together in the section. This is the language jurisdictions use to distinguish between a primary use and a secondary use. In the case of a duplex, both units are primary units – neither is secondary or lesser than the other. In the case of an ADU, by definition the ADU is secondary and accessory to the primary unit.

If the language stays in its current form, it might be clearer to say “...*In instances where a building structure can meet this definition of a duplex as well as ~~and also meets~~ the jurisdiction’s definition of a primary dwelling unit with an ~~attached or internal~~ accessory dwelling unit...*”

Minimum Compliance column: Based on your response at the RAC meeting, I’d request the following restatement: “...~~The d~~Definitions must distinguish a duplex from a combination of a single family detached unit and an ADU...” to clarify that this doesn’t have to be in the duplex definition but can be done in a different way. For instance, the County would intend to define a duplex as two primary units in a structure and retain our separate ADU definition. By reading each definition, one can see and understand the differences. While I believe it would be problematic to require jurisdictions to tie the ADU and duplex definitions together in the code, promotional materials could discuss the different options that people have.

B. 3. Definition: Zoned for residential use

Some jurisdictions in the Metro area (unsure of other areas of the state) use a one map system where there is a Comprehensive Plan map that identifies land use districts but no separate Zoning map. Is the language generic enough that it would apply to all jurisdictions, whether they have a Zoning map or not?

C. Applicability

Same comment as in A., above (singular duplex).

Alternative Approaches –

- use “may” rather than “should”
- First bullet – “*Allowing duplexes units to have...*” [If intent is that ADU would be allowed for each duplex unit, not one for the duplex as a whole]
- It is unclear what is meant by the third bullet

D.2. Relationship to other regulations. Development and Design Standards.

Should read “A duplexes developed under this model code ~~is are~~ subject to the following standards:...”

Same comment on last bullet (singular duplex)

D. 3. Public Works Standards

- The converse should also be noted – that clear and objective public works standards applied to a single-family dwelling (SFD) can also be applied to a duplex.
- Many public works standards will not be controlled by the local jurisdiction.

E. Permitted Uses and Approval Process

This is where the singular form is particularly important. I suggest the model code section read:

“A duplexes shall be permitted outright on a lots or parcels zoned for residential use that allows for the development of a single family dwellings. A duplexes shall be subject to the same approval process as the local jurisdiction applies to a detached single family dwellings in the same zone...”

Additionally, I’d suggest the following change: *“...subject to discretionary standards and criteria if such a two-track process is available”* to clarify that this is only if a two-track (discretionary or nondiscretionary) process is offered by a jurisdiction.

F.1. Development Standards: Minimum lot size.

This section should consider implications of LUBA No. 2019-115. That decision parses the terms ‘siting’ and ‘design’ in detail, and specifically found that requirements for the following are not siting and design regulations (at all – reasonable or otherwise):

- minimum lot size
- Lot dimension/shape

The order appears to deem things extraneous to the site itself not to be siting and design standards.

As such, it seems minimum lot size should not be addressed in the Model Code. The minimum lot size at Washington County is only for a new lot that's part of a land division. Minimum lot size wouldn't apply to other existing lots of record that might be smaller but where a new detached SFD could still be allowed. A possible alternative would be to say that a duplex is allowed on a residential lot where the jurisdiction would allow a detached SFD. This IS noted in the Applicability section, but that is not a standard.

F.5. Development and Design Standards. Off-Street Parking

Minimum Compliance column: The statement should be clarified whether the *“...off-street parking spaces for a duplex”* is per unit or per duplex. The premise for duplex regulations is that they be no more onerous than those for a single family dwelling. For fairness and maximum flexibility for jurisdictions, I would suggest that this be on a per unit basis.

One cannot assume that duplexes will be small units or house fewer people than an SFD, and in fact many new duplex units currently being built appear to be as large as many single family homes. Many jurisdictions require more than one off-street parking space per SFD and have valid reasons for such requirements, and therefore may also wish to require more than one

off-street parking space per duplex unit. They may also wish to reduce the requirement. The point is it should be a local decision, with the limitation that it be no more than required for an SFD per unit.

Other Comments:

1. Alternative Approaches:

Generally, these should use the term “may” rather than “should”, since these are potential approaches and not necessarily recommended approaches.

2. Draft Oregon Administrative Rules

- Comments listed above for the Duplex Model Code also apply to the draft OARs
- Applicability – 2. A. should include “mixed use”

S:\WPSHARE\Housing\HB2001& HB 2003\Rules Advisory Committee\RAC_5_Meeting\ DuplexModelCodeComments_040620.docx

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

April 8, 2020

RE: HB 2001 LMC Model code for Middle housing - Detached Plexes

As a group that includes policy makers, planners, builders, developers, and architects, we recommend that DLCD adopt Large & Metro Cities Model Code (LMC) language that will maximize development site opportunities and avoid unnecessary barriers that would prevent HB 2001 from achieving its housing development potential.

We support model code language that allows the development of both attached plexes and detached plexes. Our sense is that rulemaking advisory committee members have not had policy disagreements about allowing detached vs. attached units. Defaulting to an attached unit definition was proposed in the interest of conforming to a commonly used definition. However, requiring that plexes be structurally attached may not be as effective a standard in terms of actual housing production or greenhouse gas reduction. Instead, example code language should be:

Configurations of two, three or four attached and detached units are allowed on properties subject to the LMC.

To accompany this change, DLCD would also need to clarify the meaning of ‘detached single family dwelling’ in SB1051 so that ADUs are not automatically allowed for each unit of a detached plex.

Rationale

Detached plex development options offer significant advantages in terms of housing production opportunity and greenhouse gas emissions reduction. Here’s why:

1) Detached Plex development can make middle housing production feasible on more lots

Most new attached unit development will require the demolition of any existing home. However, a recent study by Redfin¹ concluded that only 1.4% of single family homes on the market will be desirable candidates for total site redevelopment. For detached plex development, however, any interested homeowner whose property fits the basic size requirements (and isn’t located on constrained land) may

¹ <https://www.redfin.com/blog/oregon-upzoning-bill-impact-housing-supply/>

pursue development on their property while still remaining in their primary dwelling. A 2017 analysis² by Portland State University demonstrated that there are currently 70,000 such sites within the City of Portland that have the necessary conditions to build additional detached units.

With detached plexes, homeowners can add additional units on their property incrementally as their resources permit while maintaining residence in their primary dwelling on-site. Detached plex development enables average homeowners to participate in middle housing production even while the owners still occupy the primary dwelling. This creates abundant site opportunities and a large pool of potential ‘mom and pop’ developers. This is akin to ADUs, which are largely added by homeowners instead of professional developers, at a 90% to 10% ratio.³

Conversely, opportunities to produce attached 3- and 4-plexes via whole site redevelopment works only for real estate investors/developers. Such opportunities will be largely relegated to professional developers who have the experience and financing to take on larger-scale, \$750K-\$1M site redevelopment projects. These sites are extremely limited by the current selection of homes on the market and effectively require redevelopment of an entire property all at once.

While an attached plex code will likely allow internal conversions and structural additions to an existing single-detached family home, this is an unrealistic way to provide very much middle housing. Due to size and design limitations, even simple internal ADU conversions can be challenging and comprise only 25% of ADU production in Portland.

2) Detached plex development gives flexibility for site development challenges

Allowing detached plex developments provides builders with options on challenging sites where requiring an attached structure would effectively prohibit development altogether. A summary provided by the Bend planning department includes:

- Flexibility of detached plex development allows for tree preservation and topographic site challenges.
- Privacy preferences: Detached development not sharing a wall; easier potential for separate outdoor areas.
- Provides option to convert the garage, build above it, or tear down the garage and use that same location for the 2nd units

3) Detached plex developments allow for the preservation of the existing primary structure.

Allowing detached plexes incentivizes preservation of existing homes. Preserving homes and retaining existing building materials prevents the production of new building materials and the GHG emissions

² <https://www.pdx.edu/sustainability/solutions-blog/maps-show-30-percent-of-portland-lots-could-host-backyard-homes> PSU's research tallied sites that had 917 sq ft of buildable area in the back yard and were not in hazardous areas.

³ <https://accessorydwellings.org/2019/01/14/adu-permit-trends-in-portland-in-2017-and-2018/>

associated with their production. The vast majority of GHG emissions from building materials occurs during their production - making the preservation of existing structures and materials a key strategy to reducing GHGs of the building sector.

“Building reuse almost always offers environmental savings over demolition and new construction. Moreover, it can take between 10 and 80 years for a new, energy-efficient building to overcome, through more efficient operations, the negative climate change impacts that were created during the construction process.”⁴

In 2017, Seattle hired ECONorthwest to analyze the effects of a zoning reform to allow up to two ADUs per lot. The study⁵ concluded that making it more feasible to build detached accessory homes reduced the chance that it would be profitable to demolish the existing structure, forecasting a total 11 percent drop in demolitions⁶ simply by increasing the potential for backyard structures. The drop in demolitions existed in neighborhoods at all price levels modeled.

4) Detached plex structures can preserve familiar aesthetics while enabling middle housing development, just like ADUs.

Size-constrained detached dwellings (e.g. ~1,000 sq ft detached units) are more politically palatable in existing low-density neighborhoods. Provided the additional detached units have some size constraints, detached plex development may not cause as much resentment regarding the 'change in character of neighborhoods' because detached development enables the preservation of the existing primary dwelling, and the additional units will be less visible to pedestrians, akin to detached ADUs.

5) Attached triplexes and fourplexes are complicated by building code requirements, especially when preserving the primary dwelling

Most small-scale multi-plex developments are built under the residential code using townhouse provisions with solid fire wall separations between dwellings. This approach is very difficult if not impossible to implement in any scenario where an owner or developer wants to preserve the existing home. Fire walls have specific construction requirements that are difficult to retrofit, and they block existing windows and doors that provide light, egress, and yard access for existing homes. Even if commercial building code were used and fire sprinklers installed at great expense, these issues remain.

In contrast, detached structure(s) allow an existing home to remain as is, while still allowing any new multi-plex structure to implement fire separation and safety measures independently, ensuring middle housing on residential lots remains more financially attainable for ‘mom and pop’ developers, owners, and renters. It enables the existing pool of contractors and builders who specialize in common residential construction methods to implement these models without adding unnecessary complexities, ensuring these essential small businesses maintain access to these new housing market potentials.

⁴ From the Greenest building: Quantifying the Environmental Value of Building Reuse
<https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=b6b14c78-e108-1931-3f6d-9df1a153f9e1&forceDialog=0>

⁵ http://www.seattle.gov/Documents/Departments/Council/M-AppADU_FEIS_2018_appendices.pdf

⁶ <https://www.sightline.org/2018/05/24/seattles-new-environmental-study-on-accessory-dwellings-obliterates-obstructionists-claims/>

In summary, detached plex development will assist in accomplishing these goals:

- maximize housing development opportunities
- reduce GHG
- enable more Oregonians to participate in building housing stock
- reduce building costs
- develop middle housing structures that are more consistent with existing neighborhoods
- provide builders with the flexibility to adapt to local conditions

We urge the DLCD to allow both attached and detached plex development in the model code for large and Metro cities.

Sincerely,

Metro Planning and Development Department
Homebuilders Association of Metropolitan Portland
City of Bend
Sightline Institute
1,000 Friends of Oregon
Orange Splot
Jet Planning
Ink:Built Architecture
Community Vision
Neighborhood Workshop
Portland Houseworks
Accessory Dwelling Strategies
Pozitive Properties NW
Blue Sky Property Northwest
Kaarin Knudson- Member of Technical Advisory Committee
Chris Pryor- Eugene City Councilor and member of the City of Eugene's
Housing Policy Board





CITY OF BEND

April 8, 2020

Ethan Stuckmayer
Oregon Department of Land Conservation and Development

RE: HB 2001 Rulemaking

Dear Mr. Stuckmayer,

The City of Bend would like to recognize the hard work of the Department of Land Conservation and Development staff and committees on the rulemaking to implement the middle housing requirements. The City of Bend supports the changes required by HB 2001 that provide Oregonians with more housing choices. These changes help implement the Bend City Council's goal of increasing the supply of shovel ready land available for housing and employment in alignment with the City's Comprehensive Plan by:

Permitting 3,000 units with the target of 1170 single-family units, 390 single family attached units and 1440 multi-family units by June 30, 2021.

The City of Bend encourages the following revisions to the Medium Cities Model Code and recommends the same changes be carried over into the Large & Metro Cities Model Code.

- Revise the definition for duplexes to include two dwelling units on one lot or parcel. For permitting purposes, these two dwelling units may be attached vertically or horizontally or detached.
 - For Large & Metro Cities, define triplexes and quadplexes similar to the proposed definition above for duplexes so that they may be attached or detached.
- Delete the reference to Accessory Dwelling Units (ADUs) in the duplex definition.
- Define "conflict" between the rules/model code and a local code. How would it be identified?

710 NW WALL STREET
PO BOX 431
BEND, OR 97709
(541) 388-5505 tel
Relay Users Dial 7-1-1
(541) 385-6676 fax
bendoregon.gov

MAYOR
Sally Russell

MAYOR PRO TEM
Bruce Abernethy

CITY COUNCILORS
Barb Campbell

Gena Goodman-Campbell
Justin Livingston
Bill Moseley
Chris Piper

CITY MANAGER
Eric King

In addition, the City of Bend supports the following changes to the Oregon Administrative Rules for both the Middle Housing in Medium Cities and Large & Metro Cities.

- Revise the definition for duplexes to include two dwelling units on one lot or parcel. For permitting purposes, these two units may be attached vertically or horizontally or detached.
 - For Large & Metro Cities, define triplexes and quadplexes similar to the proposed definition above for duplexes.
- Clearly state what the standards of review are for demonstrating that amendments to Development Codes and Comprehensive Plans were "considered" as stated in OAR 660-046-0030(2).

The City of Bend also requests clarification that the Alternative Approaches to be included in the model code are suggestions, not requirements. We're requesting confirmation that the City will not be required to adopt findings as to whether the City will use an alternative approach or not.

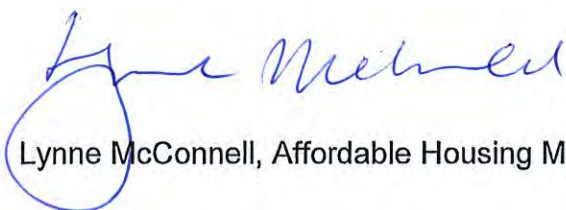
To further clarify the need to allow detached plexes, please find the attachment submitted to the advisory committees that summarizes comments from the City of Bend Planning Department regarding why applicants choose to develop a detached duplex.

Thank you for your time and consideration.

Sincerely,



Colin Stephens, Planning Division Manager



Lynne McConnell, Affordable Housing Manager

Attachment: Detached Duplexes

I asked the planners in the department why applicants prefer to construct a detached duplex instead of an attached duplex. The following are their responses:

- Primarily privacy concerns and desire to minimize the potential noise between residences.
- They already have a house on the lot and they are wanting to build a second full unit. The owner does not need to modify the existing house if the second dwelling is detached.
- Don't require fire walls/fire proofing (Bend requires six feet between units).
- In the case of adding a second unit to a lot with an existing unit, sometimes there's not a "good" wall to attach to; it could mean eliminating windows which may not be permitted for egress or, the room plain and simple needs windows, i.e., a living, room and the existing layout doesn't offer flexibility to relocate or reduce windows.
- If one unit is already existing, there may be lot constrictions, driveway location, or other reasons that the 2nd unit cannot easily be attached. For new construction, I would think attaching is economical and efficient.
- When I first bought my 1,500 square foot house on my 6,000 square lot RS zoned lot in 2004, the old Zoning Ordinance didn't even allow me to build an ADU. Now I can build an ADU (attached or detached) or a duplex. My lot has paved alley access, so if I eventually build an ADU or second dwelling unit, it will take access from the alley. By keeping the second unit detached, I should still have enough room for a small shared yard / patio / deck between my primary dwelling unit and my second dwelling unit.
- I just had a pre-app where the applicants were excited to learn that duplex/triplex are not required to share a wall, and as such, could be more compatible to the existing SFD form and development pattern of the existing neighborhood.
- More people would be inclined to duplex/triplex living if they have their own space and don't have to share a wall.
- More practical for lots with manufactured homes.
- For privacy and not sharing a wall with your neighbor and all their noises, in addition to working around existing conditions.
- They want to build above a detached garage.
- Topography and tree preservation.

- As others have pointed out, the Code was changed a number of years ago to allow a second dwelling to be added to a site with an existing single family dwelling without the requirement that they be attached. It is rare to find an existing single family dwelling where it makes sense to attach another house to a portion of it. There are access, grade, egress windows, firewalls, etc. to consider. It is two dwellings on one site either way. To require them to be attached will likely eliminate some infill opportunities.
- In the historic district it's all about preserving the original home on the property.



2017 – 10 duplexes

2018 – 12 duplexes

2019 – 17 duplexes

2020 – 4 duplexes to date

Since 2018 there have been 23 attached and 9 detached duplexes. (One of the 2020 duplex applications hasn't uploaded plans so I don't know if it is attached or detached.)

From: [Kimberli Fitzgerald](#)
To: [Edging, Sean](#); [Stuckmayer, Ethan](#)
Cc: [Lisa Anderson-Ogilvie](#); [Eunice Kim](#); [Bryce Bishop](#)
Subject: City of Salem comments - Middle Cities Model Housing and Administrative Rules
Date: Friday, April 10, 2020 11:18:08 AM
Attachments: [Middle Cities Model Housing and Administrative Rules. City of Salem Comments. 4.10.20.pdf](#)

Hi Sean and Ethan;

Attached please find our comments related to the Middle Cities Model Housing Code which in particular address some of the definitions as well as applicability sections related to Goal 5- Historic Resources. As we had discussed previously, we are recommending either a Goal exception or a minimum standard/model code language for historic. As I've noted in the attached comments, we want to ensure that jurisdictions have a clear and objective path to historic design review approval as it applies to the development of middle housing within historic districts (ie. only clear and objective standards apply) even if they choose to also offer a discretionary path.

We've also included some comments that I submitted during our last RAC meeting (to Ethan) regarding the initial review of the Large cities code.

Thanks again for working with us on this and enjoy your weekend!
Kimberli

*Kimberli Fitzgerald, AICP/RPA
Historic Preservation Officer/City Archaeologist
Historic Preservation Program Manager
503 540-2397 503 351-7578 (cell)
kfitzgerald@cityofsalem.net*

From: Heather Richards [mailto:Heather.Richards@mcminnvilleoregon.gov]

Sent: Thursday, April 9, 2020 12:34 PM

To: Stuckmayer, Ethan <estuckmayer@dlcd.state.or.us>

Subject: Duplex Size

Hi Ethan,

We ran our permit data for the last ten years for duplexes relative to size. We issued 52 permits for duplexes, average unit size was 1330 sf. Sizes ranged from 1800 sf to 1075 sf. Most appear to hover around 1300 – 1500 sf. We had one developer that built 14 duplexes at 1075 sf per unit, which were the smallest units built. Although we do not collect information about number of bedrooms, based on the size ranges it appears that most are 3-bedroom, 2 bath units or 2 bedroom, 2 bath units.

Have a great day!

Heather Richards, PCED

Planning Director

City of McMinnville

231 NE Fifth Street

McMinnville, OR 97128

503-474-5107 (work)

541-604-4152 (cell)

www.mcminnvilleoregon.gov

TO: Ethan Stuckmayer, Senior Housing Planner, DLCD
Sean Edging, Housing Policy Analyst, DLCD

FROM: Kimberli Fitzgerald, Historic Preservation Manager, RAC Member
Lisa Anderson-Ogilvie, Assistant Planning Director,
Eunice Kim, Long Range Planning Manager
Bryce Bishop, Planner II

DATE: April 10, 2020

RE: House Bill 2001: Medium Cities Model Housing Code and Administrative Rules

Thank you for the opportunity to participate in the rulemaking associated with the development of the Model Code, and to comment on the associated rules and minimum standards for medium sized cities. We have some general comments and recommendations and then some specific comments and recommendations related specifically to Goal 5 (historic) resources.

General Comments- Medium Cities

Definitions. The definition of “detached single-family dwelling or structure” seems to say that a single-family home with an attached/internal ADU is still a detached single-family dwelling (see highlight below). That does not make sense, and it is *not* consistent with the definition in the model code (see b. below). We would suggest changing the admin rules definition to match the model code definition or something like it.

- a. **Admin rules:** “Detached single-family dwelling or structure” means a single dwelling or structure on a lot or parcel that does not share a wall with any other dwelling or structure **other than an accessory dwelling unit**. A detached single-family dwelling or structure may be either site built or a manufactured dwelling.”
- b. **Model code:** “Detached single-family dwelling or structure” means a detached structure on a lot/parcel that is comprised of a single dwelling unit.”

Comments – Goal 5 – Historic Resources

Our comments related to Goal 5 Historic Resources are specifically regarding the definitions and rules associated with the implementation of the following section of HB 2001: Section 2 (5) *Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do*

not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

Proposed:

660-046-020 Definitions: *“Unreasonable cost and delay means any standard, approval criteria or process that imposes additional burden upon middle housing development above the burden placed upon single family detached development in the same zone.”*

660-046-0103 Provisions Applicable to Duplexes in Middle Cities

“Siting and design standards that create unreasonable cost and delay include any clear and objective standards applied to duplex development that are more restrictive than those applicable to single family detached structures in the same zone.”

Goal Exception Recommended

A majority of medium (and large) jurisdictions utilize discretionary historic guidelines and not clear and objective standards which will make it relatively impossible for these jurisdictions to meet the minimum requirements proposed under OAR 660-046-0103. However, establishing an exception to the clear and objective standard, similar to what is already adopted in ORS 197.307(5) would make it easier for these jurisdictions to comply.

If a goal exception is not feasible, then we would recommend instead that a minimum standard be established along with Model Code criteria, similar to what has been adopted for other design review issues that have been addressed.

Minimum Standard:

While the City of Salem already has historic design standards and a clear and objective process applicant can follow, many other jurisdictions do not, and therefore the minimum standard we recommend is that jurisdictions must provide a clear and objective path to approval. Specifically, jurisdictions who apply protective measures to Goal 5 resources as part of the development of middle housing shall ensure that the resource is not adversely affected or destroyed through the application of clear and objective design review standards. Hopefully this will be an incentive for them to develop their own clear and objective design standards, but if they do not, then we recommend the following model code language:

Recommended language for model code (middle housing) to ensure compliance with Goal 5(historic):

Alterations, additions and new construction to accommodate middle housing is allowed within established National Register or locally designated historic districts or within

individually listed National or locally designated historic sites and shall be evaluated for compatibility utilizing the following standards:

1. *Material.*
 - (A) *Exterior siding of the proposed alteration, addition and new construction shall match the appearance of the siding material of the primary resource.*
2. *Design.*
 - (A) *Alterations, additions and new construction shall be located on a secondary façade, which is one that is at the rear of the primary historic resource or is not visible to a person standing on the property line on the far side of any adjacent, at-grade public street.*
 - (B) *Alterations, additions and new construction shall be no taller than the primary historic resource and the added square footage shall be not more than 50% of the square footage of the existing primary historic resource.*
 - (C) *Alterations, additions and new construction shall be designed so no original window and door openings of the historic resource are obscured or destroyed.*

Additional General Comments – Large Cities

1. The definition of “**unreasonable cost and delay**” (below) seems to imply that we cannot apply any standard to triplexes and fourplexes, etc. if those same standards don’t also apply to single-family homes. That would mean we could not apply our recently-adopted special use standards for three- and four-family projects once those uses are allowed in single-family zones.
 - a. “Unreasonable cost and delay” means any standard, approval criteria, or process that imposes additional burden upon middle housing development above the burden placed upon single family detached development in the same zone.
2. Under the **applicability** section, the draft refers to new triplex, fourplex, etc., and those created through conversions of an existing SF home. Would it also apply to a triplex, fourplex, etc. that is created through a conversion of an existing duplex, etc? or only if the existing structure is a single-family home?

From: [Mike Reeder](#)
To: [Edging, Sean](#)
Subject: RE: HB 2001 - Unreasonable Cost and Delay
Date: Sunday, April 12, 2020 9:05:52 AM
Attachments: [image004.png](#)
[The Nuts and Bolts of Needed Housing Presentation Notes.pdf](#)

Sean:

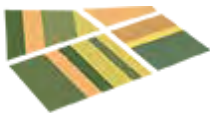
Thank you for the opportunity to provide testimony regarding the Rulemaking for HB 2001. Please include this email and the attachment to the record. Please note that the attachment is a bit dated and has my old contact information. My new contact information is below. Should you have any additional questions, please contact me directly.

Here are my general thoughts on the “unreasonable cost or delay” provision of the Needed Housing Statute:

- It is essentially ignored by local government (and by most private planners and attorneys)
- It is typically overshadowed by the “clear and objective standards” provision
- It is itself not clear and objective – who is to say what does or does not constitute unreasonable cost or delay?
- In quasi-judicial applications for housing, when applicable, I typically argue that some local government criteria that may otherwise be clear and objective are nevertheless not appropriately applied to a particular application for needed housing because the local code provision requirement serves no real purpose in light of the clear and objective requirement. I argue that any expense (regardless of the actual dollar amount) for a study (such as a Traffic Impact Analysis or tree inventory) that serves no purpose because it is not clear and objective, violates the “unreasonable cost or delay” provision because to require an applicant to expend resources on such is by itself, unreasonable.
- In my experience, I generally have not had the need or opportunity to advance an unreasonable cost or delay case past the local government stage – and given the very limited caselaw on the subject it is clear that it is a speculative (and somewhat toothless) provision
- It is a very fact specific analysis – see *Home Builders Association of Lane County v. Eugene*, 41 Or LUBA 370, 422 (2002)

Respectfully,

Mike Reeder



Law Office of Mike Reeder
Oregon Land Use Law

Office: (458) 210-2845 | oregonlanduse.com
375 W. 4th Ave., Suite 205, Eugene, OR 97401

Oregon APA Legal Issues Workshop

December 2, 2016

Portland Building Auditorium

The Nuts and Bolts of Needed Housing **Presenters: Anne C. Davies and Micheal M. Reeder**

Prepared by:

Micheal M. Reeder
Arnold Gallagher P.C.
800 Willamette Street, Suite 800
Eugene, Oregon 97401
(541)484-0188
mreeder@arnoldgallagher.com

State-wide Planning Goal 10 Definition of Needed Housing

Goal 10 (OAR 660-015-0000(10)) defines “Needed Housing Units” as follows:

“***Needed Housing Units*** -- means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On or after the beginning of the first periodic review of a local government’s acknowledged comprehensive plan, “needed housing units” also means government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, “needed housing units” also includes (but is not limited to) attached and detached single-family housing, multi-family housing, and manufactured homes, whether occupied by owners or renters.”

Goal 10 Rule Definition of Needed Housing

The Goal 10 administrative/interpretive rule (OAR 660, Division 8) defines “Needed Housing” as follows:

“(6) ‘Needed Housing’ means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types: (a) Attached and detached single-family housing and multiple-family housing for both owner and renter occupancy; (b) Government assisted housing; (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; (d) manufactured homes on individual lots

planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and (e) Housing for farmworkers.”

Needed Housing Statute – ORS 197.307

In addition to Goal 10 and the Goal 10 Rule, the Oregon Legislature adopted what has been labeled the “Needed Housing Statute”, ORS 197.307. Adopted in 1981 the Needed Housing Statute was a codification of the Land Conservation and Development Commission’s “St. Helens” housing policy. The purpose of the St. Helens Policy was to assure the provision of adequate numbers of needed housing types in a community at least cost, while retaining the flexibility for the community to set standards for approval and attach special conditions to particular development proposals when appropriate.

Related Statute – ORS 227.173(2)

This statute clarifies that when cities impose approval standards for needed housing projects under ORS 197.307, that the approval standards must be facially “clear and objective”. ORS 227.173(2) states:

“When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.”

Drafting anything to be clear and objective is a difficult task!

St. Helens Policy

The original purposes of the adoption of Goal 10 - Housing, the Goal 10 Rule and ORS 197.303 – 197.307 was to make sure that local communities, typically the more affluent, did not discriminate against low-moderate income people and to require all cities to take in their “fair share” or low-moderate income people and families. It was a tool to counter exclusionary zoning. See Anne Davies’ discussion of LCDC’s 1979 “St. Helen’s Policy.” The full text of the St. Helens Policy is attached to the end of this document.

Housing Affordability Crisis - Possible New Emphasis on Needed Housing?

However, the question for the day is whether there should be a “new St. Helens Policy” that remedies the deficiency in suitable and affordable housing exacerbated by overly restrictive land use laws, including stingy UGBs, advanced under the policy of protecting farm and forest land? While restrictive land use policies may not be facially

discriminatory, it can be argued that the natural consequences of such policies tend to discriminate against low to moderate income people, minorities and senior and disabled individuals.

Take for example a recent report this week in the *Oregonian* described a Portland survey that found that almost 60% of respondents in 2016 said that their neighborhood was unaffordable. This was up from a little more than 20% in 2012.
http://www.oregonlive.com/portland/index.ssf/2016/11/survey_portland_livability_fal.html#incart_2box

Average minority households are effectively priced out of Portland, along with households headed by single mothers according to the 2016 State of Housing report just released. Unaffordability disproportionately impacts low-income residents, communities of color, seniors and individuals with disabilities:

<http://portlandtribune.com/pt/9-news/334726-214439-report-portland-housing-increasingly-unaffordable-new-policies-plans-could-pay-dividends>

The City of Eugene is experiencing an extremely tight housing and rental market that is contributing to the homeless problem:

<http://registerguard.com/rg/news/local/35017190-75/lack-of-affordable-housing-in-eugene-springfield-swells-homeless-students-ranks.html.csp> In this article, the homeless-student liaisons for the Bethel, Eugene and Springfield School Districts cite housing costs:

“‘There’s not enough affordable housing,’ said Deborah Daily, the Eugene district’s homeless-student liaison. ‘There’s an increase in families living in their cars, and owners in the area are choosing to do no-cause evictions...the rental market is very competitive. People don’t have the means to move in, even if they have jobs. They don’t have the money for a down payment or a deposit, and they just can’t find housing.’”

The City of Springfield is also grappling with a tight housing market and affordability issues. The Springfield City Council recently discussed its housing affordability problem:

<http://registerguard.com/rg/news/local/35039257-75/developer-eyes-springfield-land-for-apartment-project-as-city-grapples-with-rental-shortage.html.csp>

<http://registerguard.com/rg/news/local/35026206-75/springfield-eyeing-solutions-for-affordable-housing-crunch.html.csp>

Recent Needed Housing LUBA Caselaw

Walter v. City of Eugene, 73 Or LUBA 356 (2016) (LUBA No. 2016-024), *aff'd* 281 Or App 461 (2016)

GPA1, LLC v. City of Corvallis, 73 LUBA 339 (2016) (LUBA No. 2016-013)

Group B, LLC v. City of Corvallis, 72 Or LUBA 74 (2015) (LUBA No. 2015-019), *aff'd* 275 Or App 577, *rev denied*, 359 Or 667 (2016)

Other Important Needed Housing Caselaw

Rudell v. City of Bandon, 249 Or App 309, 318-320 (2012) (where Court determined that the city's interpretation of its definition of "foredune" is "sufficiently clear and objective" to "pass muster" under the Needed Housing statute that requires approval standards to be clear and objective).

Montgomery v. City of Dunes City, 236 Or App 194 (2010) (where the Court held that ORS 197.303(2)(a) does not except cities with a population less than 2,500 from the application of the "clear and objective" standards required by ORS 197.307(6) when its comprehensive plan identifies a particular housing type as "needed housing" (i.e. "opts in")).

Rogue Valley Assoc. of Realtors v. City of Ashland, 35 Or LUBA 139 (1998), *aff'd*, 158 Or App 1 (1999) (high-cost housing or luxury housing as needed housing).

State of Oregon v. City of Forest Grove, 9 Or LUBA 92 (1983) (LUBA No. 82-101) (discrimination against needed housing types through charter amendments is prohibited).

Evergreen Development, Inc. v. City of Coos Bay, 38 Or LUBA 470, 477-479 (2000) (LUBA No. 2000-003) (the needed housing provisions may not apply when rezoning land for housing for which the buildable lands inventory is already adequate).

Petitions to LCDC For Enforcement Under ORS 197.319-197.335

"The Commission can do what LUBA cannot." --Bill Kloos in the *GPA1, LLC v. Corvallis*, November 21, 2016 Petition for Enforcement Under ORS 197.319-197.335.

On November 21, 2016, on behalf of GPA1, LLC and the Oregon Home Builders Association, Eugene attorney Bill Kloos filed a Petition for Enforcement. This Petition was filed with the Land Conservation and Development Commission (DLCD) pursuant to ORS 197.319-197.335.

The City of Eugene will also likely be the subject of a Petition for Enforcement in the near future to be filed on behalf of the Home Builders Association of Lane County and the Oregon Home Builders Association.

Needed Housing Checklist

1. Is development proposal fit within the definition of “Needed Housing” under ORS 197.303?
2. Is the land subject to the proposal within a UGB?
3. Is the land subject to the proposal identified in the Buildable Lands Inventory?
4. If local government has an option for an “alternative approval process” track to needed housing (provided under ORS 197.307(6), is the development proposal applied for under the alternative track?
5. Are the approval standards, conditions or procedures “clear and objective”?
 - a. Are the standards/conditions/procedures capable of more than one plausible meaning? I.e. are there multiple reasonable interpretations?
 - b. Are the standards or conditions “subjective, value laden” such as “proposal must be in harmony with the surrounding vicinity...”?
 - c. Does an interpretation of a standard/conditions/procedure support the purpose of the standard/condition/procedure?
6. Even if the standards/conditions/procedures are clear and objective, do the standards/conditions/procedures have the effect either by themselves or cumulatively of discouraging needed housing through unreasonable cost or delay?

Note: While the author takes full responsibility for the content of this document, the author would like to acknowledge the gracious assistance of Bill Kloos by providing the author with valuable insight about much of the material and caselaw contained herein. See <http://www.landuseoregon.com/projects/> for additional information.

LAND CONSERVATION AND DEVELOPMENT COMMISSION
HOUSING POLICY

Policy:

Where a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, housing types determined to meet that need shall be permitted in a zone or zones with sufficient buildable land to satisfy that need. This policy shall not be construed as an infringement on a community's prerogative to 1) set approval standards under which a particular housing type is permitted outright, 2) impose special conditions upon approval of a specific development proposal, or 3) establish approval procedures. However, approval standards, special conditions, and the procedures applicable to both 1) must be clear and objective and 2) must not have the effect, either of themselves or cumulatively, of discouraging, such as through unreasonable cost or delay, the needed housing type.

Discussion:

The purpose of the St. Helens housing policy is to assure the provision of adequate numbers of needed housing types in a community at least cost, while retaining flexibility for the community to set standards for approval and attach special conditions to particular development proposals when appropriate. To ensure that this policy is properly implemented, the procedures governing applications to construct needed housing types, including procedures governing the imposition of special conditions, shall be clear and objective and must not have the effect, individually or cumulatively, of discouraging, such as through unreasonable cost or delay, a needed housing type.

In order to clarify and effectively implement the St. Helens policy, this discussion will focus on the concept of "conditional use"--a confusing term which the above-stated policy purposely avoids using. In a recent case related to a denial of a conditional use permit for a mobile home, the Oregon Supreme Court provided three distinct interpretations of "conditional use" which are helpful in this discussion:

"Standing alone, the term 'conditional use' can convey quite different meanings. It could mean that the specified use is a permitted use whenever certain conditions exist or are satisfied. Or, second, it may mean that the use will be permitted subject to special conditions attached to the individual permit. Third, 'conditional use' historically has often been employed simply as a device to permit discretionary decisions on certain uses, without much attention to the meaning of conditional" Anderson v. Peden, 284 Or at 316.

For the purpose of clarification, this discussion will refer to the first type of condition as "approval standards," the second as "special conditions," and the third type as "discretionary criteria."

LCDC Housing Policy

1. APPROVAL STANDARDS

The use of "approval standards"--where a housing type is permitted whenever certain factors exist or are satisfied--is consistent with this policy so long as the standards used are clear, definite and objective, and do not have the effect, individually or cumulatively, of discouraging the needed housing type. Such factors must be written into appropriate sections of the zoning ordinance as standards governing approval of building permits for the particular housing type as required by ORS 215.416(5)(6) and 227.173(1)(2).¹ Thus, it would be entirely appropriate for a community to require, for example, that all multifamily development have one and one-half parking spaces per unit and direct access to a paved city street, or that garden apartments be limited to two stories and provide for 15 percent landscape coverage.

2. SPECIAL CONDITIONS

It would also be appropriate for a community to attach special conditions to a particular development proposal by, for example, requiring additional screening, controlling access, or even by specifying, in precise terms, design features which ensure that development will be safe and attractive. However, it would not be appropriate for a community to employ special conditions or procedures governing special conditions as a device to exclude a needed housing type, to delay construction, or to push the cost of a proposal beyond the financial capabilities of the households for whom it was intended. Moreover, special conditions cannot be so discretionary as to be employed as a device to deny a proposal that otherwise complies with approval standards. The discretion provided is to impose reasonable conditions, not to deny approval. In order for special conditions to meet the St. Helens test, the range of conditions that may be imposed on a specific development must be expressly stated in the ordinance and must be strictly limited in scope. Any special conditions imposed on a particular development must be clear and objective and must not have the potential effect of discouraging a needed housing type.

Design review is a form of special condition. Where standards in the zoning ordinance are satisfied, preliminary approval would be granted. Compliance with special conditions would be required for final approval. In all cases the applicant should be informed of the applicable special conditions at an early stage in the development approval process.

¹ For a discussion of approval standards and special conditions and their application to ORS 215.416 and 227.173 see Commonwealth Properties Inc., v. Washington County, Oregon Court of Appeals 35 Or. App. 387 (1978).

LCDC Housing Policy

3. DISCRETIONARY CRITERIA

The third type of conditional use is where approval is discretionary and dependent upon vague criteria such as "no adverse impact on the neighborhood," or "compatible with surrounding development." Such criteria are inappropriate as a means for providing for a needed housing type. Discretionary criteria would be permissible only upon assurance that there is adequate buildable land to accommodate the need for a particular housing type in other zones in which discretionary criteria do not apply.

EXAMPLES OF STANDARDS AND CONDITIONS

Clear and Objective Approval Standards

Mobile Home Parks shall be approved provided that:

- the park is located on either a collector or arterial street paved to city standards, and is served by the full-range of services as defined in the plan.
- a landscape plan prepared by a registered landscape architect has been provided which includes, a) a 4' berm with coniferous trees of at least 6' in height planted at 10' intervals; b) deciduous trees of at least 8' in height planted at 15' intervals along all private roads.

34

Multiple family development shall be approved provided that:

- landscaping exceeds 15% of lot area;
- units are clustered in groups of six or fewer;
- the project is served by paved city streets with sidewalks;
- lighting is designed to not shine on adjoining properties and is limited to 10' in height;
- one and one-half parking spaces per unit are provided.

UM:krh/MC

Clear and Objective Special Conditions

The jurisdiction may impose the following conditions to minimize conflict between proposed and existing uses:

- increase setbacks to a maximum of 20' to ensure adequate sunlight to adjoining properties;
- screen unsightly development such as trash receptacles, mechanical apparatus, storage areas, or windowless walls;
- retain trees or other natural features under specified conditions;
- require design details in harmony with existing development in an historic overlay zone;
- modify access provisions for safety reasons;
- require the staggering of units to avoid a "barrack-like" effect;
- require participation in an improvement district to ensure provision of basic services, parks, or streets and sidewalks directly benefiting the proposed development.

Discretionary Criteria Inconsistent with Housing Policy

Evidence shall be provided to demonstrate that the proposed use will:

- be in harmony with the surrounding neighborhood;
- preserve and stabilize the value of adjacent properties;
- encourage the most appropriate use of the land;
- have a minimal adverse impact on the livability, value and appropriate development of abutting properties and the surrounding area compared with the impact of development that is permitted outright;
- preserve assets of particular interest to the community;
- not be detrimental or injurious to property and improvement in the neighborhood or to the general welfare of the community;
- will not unduly impair traffic flow or safety in the neighborhood.

Failure to meet any of the above standards shall be grounds for denial.

From: [Bonnot, Cazmine](#)
Subject: IBTER testimony received
Date: Monday, April 13, 2020 11:58:04 AM

TAC members: The following are thoughts after having read the Mtg. #4 packet.

1) Related to the 30-unit limitation/fire code issue: We should allow developers to decide IF they want to build multi-unit housing with sprinklers in order to address the fire code. We should NOT change safety standards. These standards are for the safety of all living in these areas.

2) Related to the equity impacts/gentrification and OHCS metrics. This question needs a broader conversation with the RAC. The only reason for the IBTER TAC to be involved would be if there would be some way to get infrastructure investment in these under invested areas. Experience has shown that under invested areas become targets for redevelopment, removing currently "affordable" housing from a city's inventory. We need more housing, but the new development is likely to not be as affordable as that being replaced--unless it is subsidized housing. It's unclear if there would be a way to limit development so as to only replace with similarly cost equivalents.

3) The HPS Strategies list should include a city's investments by adding sidewalks and transit service so as to increase appeal to developers and middle housing. Also, the stormwater tools listed on page 30 of the packet from local codes should be additional suggestions for the Middle Housing Code. (Maximum lot coverage, Right-of-way storm management, Low impact development) And they should NOT be considered unreasonable cost and delay. The stormwater issue is about public health and safety.

Looking forward to the April 14th conversation. Peggy Lynch, LWVOR

From: Peggy Lynch [mailto:peggylynchor@gmail.com]

Sent: Sunday, April 19, 2020 9:12 PM

To: Taylor, Casaria <ctaylor@dlcd.state.or.us>; Stuckmayer, Ethan <estuckmayer@dlcd.state.or.us>

Cc: Peggy Lynch <peggylynchor@gmail.com>; Debbie Aiona <debbieaiona@fastmail.com>; Nancy Donovan <nancy.donovan@icloud.com>

Subject: MCTAC Mtg. #5 materials - Comments

https://www.oregon.gov/lcd/LAR/Documents/MCTAC5%20Packet.pdf?utm_medium=email&utm_source=govdelivery

Page 38 of packet: Meeting Packet Item #7: Large and Metro Cities Preliminary Model Code [#3] Clearly, more work needs to be done to better define “constrained lands” and within which areas higher level middle housing must be allowed. **Currently, DLCD recommends that higher-level middle housing be allowed on all lots and parcels outright** but with the caveat that on “constrained lands” (which are comprised of goal protected areas and infrastructure deficient areas), the jurisdiction may apply additional protective measures to the development these housing types. Do you concur with this recommendation? How should the model code address the requirement for middle housing “in areas zoned for single-family homes?”

Having attended legislative hearings and listened to legislator statements on the chamber floors and in conversations with some electeds, it seemed as if there was an expectation that jurisdictions could select specific "areas" for the higher level middle housing beyond the caveat of "constrained lands". This is an issue I have asked from the beginning: what criteria can a jurisdiction use in selecting those "areas"? Had the assumption been that the entire jurisdiction where SF zoning exists would require this higher-level middle housing, I sincerely believe the bill would not have passed the Senate.

From Page 65 of the packet: As with the model code, local governments may use other criteria to regulate middle housing (other than duplexes) within areas zoned for residential use on constrained lands or infrastructure-deficient areas. **Does this mean that ONLY these two criteria can be used to exclude SF zoned lands w/in a jurisdiction? Does this language come directly from HB 2001?**

Separate issue: Washington County brought up the issue where jurisdictions must allow some building on a lot that they would otherwise not allow. How is that issue addressed in the rule?

Thanks for considering these comments. Peggy Lynch, League of Women Voters of Oregon

From: [Kimberli Fitzgerald](#)
To: [Edging, Sean](#)
Subject: Comments/Questions: MCTAC Packet #5- Large City Code
Date: Tuesday, April 21, 2020 10:40:06 AM

So – I am wondering if you can pass along these general questions/comments from the City of Salem?

- The model code for large cities has four **design standards** for triplexes and quadplexes, but the draft doesn't say yet what the min. compliance would be for cities. Can it be clarified what the minimum standard is? We don't currently require some of the design standards that are proposed in the model code, and vice versa.
- The model code for large cities defines **lot coverage** as the amount of lot area covered by structures and *impervious surfaces*. In Salem -Our definition does not include impervious surfaces, and it seems like their draft definition would reduce the amount of lot area that could be used for middle housing because driveways, parking areas, etc. would count toward a maximum lot coverage (thereby reducing the amount of space available for housing) – (Someone else had this question/and staff recognizes this challenge in the comments).
- It is still not clear in the model code what “**other criteria**” (in the applicability section) could be used to determine where triplexes and quadplexes are located. It appears that min. lot size could be used, but what about things like min. distance to transit (or other locational standards)?
- The mode code for large cities says for **min. lot size and min. lot width**, the min. compliance for triplexes and quadplexes is “no less than the minimum” lot size/width for single-family detached in the same zone. Does that mean a city could have a min. lot size or width that is as big as it wants? It seems like that could be used to really discourage triplexes and quadplexes.
- In the large city code— the interpretation of “Unreasonable cost and delay” means the City of Salem can't apply our new triplex/fourplex standards-- Since any approval criteria, or process that imposes additional burden upon middle housing development above the burden placed upon single family detached development in the same zone.
- Under the **applicability** section, the draft refers to new triplex, fourplex, etc., and those created through conversions of an existing SF home. Would it also apply to a triplex, fourplex, etc. that is created through a conversion of an existing duplex, etc? or only if the existing structure is a single-family home?

Thanks-
Kimberli