

MIDDLE HOUSING MODEL CODE TECHNICAL ADVISORY COMMITTEE MEETING PACKET #5



TO: Middle Housing Model Code Technical Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: Model Code Technical Advisory Committee Meeting Packet #5

Middle Housing Model Code Technical Advisory Committee Members,

Below, you will find information that will help you prepare for the Middle Housing Technical Advisory Committee (MCTAC) meeting scheduled for **April 21 from 9am- 12pm**. *IMPORTANT NOTE: Due to public health concerns, this meeting will be held entirely over Zoom. Please do not plan to attend this meeting in person at the DLCD offices in Salem.* At the time of the event, please follow the Zoom link in the meeting calendar appointment. Zoom offers both a video conferencing option and a telephone option. The Zoom meeting information is also provided here:

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

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

Request for Review and Comment on Meeting Packet Materials

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

The primary objectives for MCTAC5 are to:

1. Review final revised versions of Medium Cities Model Code, Oregon Administrative Rules, and Fiscal and Housing Impact Statements,
2. Review a revised version of the Large and Metro Cities Model Code Part 1, and
3. Review Part 2 of the Large and Metro Cities Model Code.

Included in this packet are materials for your review that will inform the discussion at the next meeting. Please review these documents prior to the meeting on **April 21 from 9am – 12pm**.

MCTAC Meeting Packet #5 Materials List:

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

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

Thank you,



Ethan Stuckmayer

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 Middle Housing Model Code TAC process:

Robert Mansolillo, Middle Housing Planner

Robert.mansolillo@state.or.us

503-934-0053

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.*

Middle Housing Model Code Technical Advisory Committee Meeting #5

April 21, 2020; 9:00 am – 11:00 pm

By Zoom Web Conference

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



PROPOSED AGENDA

Middle Housing Model Code Technical Advisory Committee Meeting		
Time	Topic	Who
9:00 – 9:05 am	Welcome, Opening Remarks, and Review Agenda	<ul style="list-style-type: none">• Jerry Lidz, LCDC• Ethan Stuckmayer, DLCD• Robert Mansolillo, DLCD
9:05 – 9:10 am	TAC Member Introductions <ul style="list-style-type: none">• <i>Introduce yourself to the group</i>• <i>Name</i>• <i>Organization</i>	<ul style="list-style-type: none">• DLCD Staff• Angelo Planning Group• TAC Members
9:10 – 9:40 am	Revised Draft Medium City Model Code and OAR 660-046	<ul style="list-style-type: none">• Robert• Matt Hastie, Angelo Planning Group
9:40 – 10:55	Large and Metro Cities Draft Code Parts 1 & 2	<ul style="list-style-type: none">• Matt Hastie, Angelo Planning Group
10:55 am – 11:00 pm	Next Steps and Wrap Up	<ul style="list-style-type: none">• Jerry• Ethan• Robert

Middle Housing Model Code Technical Advisory Committee (MCTAC) Meeting #4
March 30, 2020; 9am – 12pm
Zoom Virtual Meeting

Key Insights Summary

Medium Cities Definitions and Applicability – Members noted that definitions and applicability should be thoughtfully worded in order to provide the ability jurisdictions sufficient latitude to facilitate middle housing development and to provide sufficient clarity on intent to protect jurisdictions from unnecessary legal challenge in implementing middle housing code. There is existing concern from members about the relationship between HB 2001 and SB 1051 with regard to duplexes and ADUs provided in conjunction with a single-family detached dwellings.

Unreasonable Cost and Delay – Members indicated that the definition for “Unreasonable Cost and Delay” is too broad, inviting the opportunity for legal challenges in which property owners and jurisdictions seek clarification from appellate courts on the specific definition for this term. With regard to duplexes, the current definition leaves the possibility for burdensome standards applied to single-family detached dwellings to also apply to duplexes. With regard to other middle housing types, it will become increasingly important to define parameters around what constitutes unreasonable cost or delay as these housing types will have additional siting and design standards that do not apply to single-family detached dwellings

Minimum Off-Street Parking Requirements – Members did not reach consensus regarding appropriate off-street parking parameters within the Medium City Model Code and Administrative Rules. Some members feel that it is appropriate to limit the number of off-street parking spaces a jurisdiction can require to reduce impacts to housing availability and affordability, while others feel that local jurisdictions should have the ability to require more off-street parking to respond to local conditions. Underlying this discussion is debate about whether developers will sufficiently respond to market forces when there is a stronger demand for parking availability. Additionally, the Model Code’s zero off-street parking requirement may put smaller jurisdictions in a tough position if they lack the resources to produce development codes in compliance with HB 2001.

Fiscal Impact Statement – Clear guidance on the relationship of HB 2001 and Measure 56 will be important to provide to jurisdictions as they adopt and implement middle housing code.

Large Cities Definitions and Applicability – There is concern among members about definitions outlined in HB 2001 in relationship to townhouses and cottage clusters presenting conflicts with middle housing development flexibility. It will be important for rulemaking to clarify distinctions between the housing types in both the model code and administrative rules while preserving as much flexibility in producing a variety of middle housing types as possible.

Meeting Notes

Participants

- Mark Rust
- Kol Peterson
- Brian Martin
- Kimberli Fitzgerald
- Amanda Ferguson
- Jeremy Rogers
- Michael Boquist
- Peter Keyes

- Kevin Young
- Alexis Biddle
- Mary Kyle McCurdy
- Ted Reid
- Jonathan Morales
- Heather Richards
- Martha Fritzie
- Kaarin Knudson
- Hope Beraka
- Ellen Miller
- Susan King
- Ryan Jennings
- Pauline Hardie

- Theresa Cherniak

Staff/LCDC

- Ethan Stuckmayer.
- Jerry Lidz.
- Robert Mansolillo.
- Samuel Garcia.
- Matt Hastie.
- Kate Rogers.
- Sean Edging.
- Casaria Taylor
- Cazmine Bonnot
- Kevin Young

Overview of Medium City Model Code

Definitions

Matt: Eliminated two definitions. Common wall taken out because we revised the definition of a duplex to remove that term; dwelling unit, rather than including a definition of dwelling unit in this model code, we would defer or refer to local jurisdictions' definitions of dwelling unit. We didn't have a compelling reason to include a definition in this code of dwelling unit and we didn't want to set up conflicts between the way local jurisdictions defined dwelling unit.

Detached single family dwelling or structure, we made some minor edits here so it's consistent with the definition of duplex. We did revise the definition of duplex to try to simplify it and generally described duplexes as, "A detached structure on a lot or parcel that's comprised of two dwellings." We eliminated the common wall part of that and we revised it from building to structure to be consistent with the State Building Code. We say, "Detached structure on a lot or parcel," so that we're not confusing a single-family detached home or ultimately, a duplex with a town home unit.

- Amanda: Model Code definition is not the same as the administrative rules. Is this intentional?
 - Matt: Yes.
 - Amanda: Not clear that the OAR definition is not what a jurisdiction is expected to adopt.
- Mary Kyle: Still concerned about the addition of the ADU in the Model Code. Feels strongly that the two should be separated and ADUs not referenced in the model code. Concerned that jurisdictions will try to get around provisions of SB 1051 and precludes the option of requiring a duplex and an ADU on a single-family lot. Put the separation in guidance as guidance and leave the distinction to the local jurisdiction.
 - Ethan: Intent is to provide clarification on the overlap between the two.
- Kol Peterson: Is DLCD required to use the term "single-family detached dwelling" under HB 2001? Possible to change to "detached single household dwelling" or similar?
- Jerry: An ADU is "accessory to" but I do not know what that means. It's hard to sort out what differentiates an ADU from a duplex other than a size.

- Ethan: Part of it is SB 1051 definition and part of it is the definition from local jurisdictions.
- Kevin: My experience has been that “accessory to” indicates that the structure is contingent on the existence of the primary unit.
- Mark Rust: Unreasonable cost and delay – would it make sense to include a reference to clear and objective standards? To clarify that if it’s not clear and objective, it’s also unreasonable cost and delay.
- Jerry: Concerned “unreasonable cost and delay” is so broad that it invites LUBA cases that anything is unreasonable cost and delay.

Applicability

- Matt: Removed the language allowing for individual utility connections to units
- Amanda: Goal 15 Willamette Greenway – consider adding that.
- Michael: Conflicts – Concern that Model Code standards are more restrictive than minimum compliance standards. If someone has standard that is less restrictive than the MC, then the minimum should apply, not the MC.
 - Ethan: The MC only comes into play if the City adopts it or does not act to adopt. In the situation where the City takes no action, then the conflict language should be what is listed here.
- Susan King: Alternative approach bleeds between requirement for “every lot” and “in areas” – pushing middle housing in ways that HB 2001 did not intend.
 - Matt: The alternative approaches are not binding – they’re approaches to consider for jurisdictions. It will be in a guidance document, not something that’s required.
 - Susan: These middle housing on “all lots” in single family was one of the biggest pieces of controversy in the bill. It doesn’t seem to me it should be anywhere – suggests removal.

Permitted Uses and Approval Process; Development Standards (1-4)

- Matt: indicated that jurisdictions could provide a discretionary path if chosen by the applicant.
 - Height & Setbacks: Made changes to ensure duplex could be constructed.
 - Off-street parking: No off-street parking required for a duplex under this model code
- Brian Martin: Maximum Density – Jurisdiction pre-existing density max do not apply to duplexes. Hypothetically – could you include as many duplexes as you want on that lot?
 - Covered under applicability
 - Brian: Not sure that the sentence is going to survive – Given the law, going to end up with more than 2 on a lot. If it doesn’t survive, we may have to amend maximum density
- Amanda: Concerned about OAR on density. OAR has a minimum density requirement. Must count duplexes as equivalent to a single-family dwelling. Cottage Grove just raised density standards to increase development – we would have to go back and re-write that code. Wanted to change the code to allow duplexes and increase minimum density.
 - Brian: Good question. 1-4 in OAR – Wondering if a better approach is “you can’t have standards that prevent duplexes” Some of these require one specific solution and reduces flexibility.

Minimum Parking

- Kol: Pleased that DLCD is coming to this point of view. Two questions – large and medium, this same logic applies there. Curious about cities that require more than 2 off-street parking spaces for a SF house – if they put a duplex, they can only require two.
 - Ethan: Yes that would be the case. None currently more than two.
- Michael: Two for one – we are making an interpretation that a duplex is the same as an ADU in that they roughly have the same occupancy – in general create no additional parking demand in comparison. Believe there's a higher parking in rural communities. We adopted a standard that allowed for reduced right-of-way design width to eliminate on-street parking and reduce ROW infrastructure cost and promote new housing.
- Susan: Appreciates the data – subsequent discussion is about imposing a one-size-fits-all standard around the state. I would suggest MC and minimum compliance be the same and leave it to jurisdictions.
 - Imposing “not more than two” ignores local conditions that may need to be taken into account
- Heather: Relative to the data provided – interested to know if it extrapolated multi-family housing. Concerned about premise of model code having no off-street parking as a carrot and stick to get communities to talk about parking requirements for duplexes. It's really for smaller communities that don't have resources to implement the model code – puts them in position where they deliberately need to address. Concern about the discussion of free market. Affordability limits choices for people – if we produce units that are not “quality” that we are not providing a choice for people that has the means to purchase a home with that parking. Cost of housing is determined by the market and not by inputs. McMinnville has been working to encourage increased density. This will make it difficult to implement.
- Kaarin: Between the Model Code and minimum compliance, grappling with a difficult issue and looking to change what has been possible. I see what's proposed as a very reasonable middle point in terms of direction from the law and gives jurisdictions the chance to craft workable solutions.
- Brian: This issue is not a rural/urban divide. Cities I've worked in have a variety of situations. Don't fully understand data in the slide – vehicle ownership by tenure and Klamath Falls, there's around 40% of renters with 1 or more cars. Beaverton has streets with no on-street parking and some are barely streets (unimproved). Must give cities some ability to react to local conditions. Cities with no on-street parking need a safety valve. Challenging to have a one-size-fits all standard so cities can establish reasonable standards and defend them.
- Jerry: What if duplex is created by addition to duplex where two spaces allocated to existing single-family home. Could be a large number of vehicles without any space
- Ted Reid: Notes that minimum compliance standard does not mean a builder cannot build more than two parking spots – most builders will if they perceive there's consumer demand.
- Martha: I think we need to distinct between “required and allowed”. Markets will make decisions about parking provided – nothing here preventing that. This will happen in markets where there is a real or perceived notion that there are more vehicles. Heather brought up zero parking requirements – causes a bit of concern because we want something that can be used by

jurisdictions without the capability to implement compliant code; this prevents that from being the case.

- Amanda Ferguson: I agree the Model Code should just be a plug and play; forces communities to have this conversation. Could take the text for the alternative approach and put that into the Model Code. A range would be better than zero. Don't set up for a major challenge on this – parking was the one thing nobody was willing to bend on, will be sticking point for many jurisdictions.
- Alexis: Transit access with communities in the medium size – transit access; highly unlikely people make car ownership decisions on transit, not choice riders. You wouldn't find much of a difference between duplex and apartment complexes.
- Mary Kyle: Later discussion about parking. Throw out further research – those include, it's not a choice for many households whether they drive a car or not. Confirm that about 25% of the population and growing does not own a car, because of age, ability, or income. Problems with the word "choice" – by requiring we drive up housing cost and driving down housing opportunity. Model Code issue – if you have a number between 0 and 2 is pretty rigid; the discussion about how plug and play the model code has to be. Density and number of people – duplexes are likely to be same size structure as a single-family house. Density of structure isn't really changing – number of people isn't necessarily equivalent to two households. The number of people and impact doesn't necessarily change between SF and duplex. Argues for fewer than more. Later discussion would be useful to know.

Excluded lot coverage and floor area ratio from the model code but have included one section here about lot coverage and floor area ratio in the Oregon Administrative Rule for jurisdictions that do use it. If a local government applies a floor area ratio or lot coverage standard to single-family detached, that same standard should be applied to a duplex in the same zone.

Sections G and H: we really have not made any substantive changes in the design standard section. The idea here is that essentially any design standards of the type, we noted here that jurisdictions apply to single-family, detached would apply to duplexes and that they wouldn't be able to apply additional design standards to that type beyond those.

Administrative Rules – OAR 660-046

- Amanda: Definition for "middle housing" - will this be expanded when large city code comes out. In consideration of SDCs, prop tax exemptions, etc.
 - Ethan: this document only includes sections relevant to medium cities with intent to come back and add other elements.
- Kimberli: My question is regarding with what's left to do on the remainder of Goal 5. Concern about unreasonable cost and delay applying to Goal 5 areas.
- Alexis: Newly eligible cities – should be some sort of time frame with that section just so there's certainty when they must be compliant. Suggestion: Based on the timespan between adoption of MC/rules and statutory deadlines.
- Mary Kyle: Unreasonable cost and delay "anything imposed on middle housing above the burden of single family detached". Concerned that there are burdensome standards applied on SF detached housing which would apply to middle housing. This might not go far enough – example in parking, in course of cities proposing PAPAs to conform to ADU requirements,

one city stated that it requires four off-street parking spaces for a single family house, couldn't find that in the code. This section is a good direction but not totally comprehensive.

- Theresa: Talks about middle housing being duplex, but whatever point we add other middle housing – this will need to change. When you get into other types, we may have other types of requirements that are okay.
- Ethan: Triplexes and up – The definition for “unreasonable cost and delay” for higher middle housing types, there is guidance in the bill allowing for siting and design of middle housing and duplexes being similar to SF detached.
- Theresa: Is the process the regular PAPA process?
 - Ethan: Yes, it would be routine PAPA process.
- Martha: Definitions – “Duplex” defining in admin rules, understand the intent to allow for detached definitions. Concerned this doesn't get us there – if someone reads this, they might interpret this without context and say “any two units on one lot or parcel”
- Martha: “Structure” – Detached single family dwelling or structure, adding structure potentially adds different meaning. Agree with allowing flexibility, but definition doesn't allow jurisdiction flexibility to define it as two detached dwellings. Scenario where someone wants to challenge definition of duplex that “has to be attached”.
- Theresa: A definition is not a minimum requirement – People would see that and question whether a jurisdiction can do anything other than literal definition. Consider adding text confirming that a jurisdiction may decide whether it is attached or detached.

Fiscal Impact Statement

- Alexis: Housing Impact State – 1200 SF example as baseline for comparative impact. Why point this out when it's such a rare event? Could lead to testimony talking about increase in property value when most SF homes are built at double that size.
- Amanda: Will this require a Measure 56 notice?
 - Ethan: Blurb in FIS about Measure 56 based on DLCDC interpretation
 - Kevin: Measure 56 requires notice for taking away property rights or reducing values. In this case, we are expanding opportunities and uses and will enhance property values. We do not anticipate Measure 56 trigger, but invites other viewpoints.
 - Amanda: Written state guidance on that would be helpful for jurisdictions.

Large City Middle Housing Model Code, Part 1

Definitions

- Peter Keyes: Common wall and townhouses; more confusing than it used to be – if common wall is between townhouses and townhouses are on separate lots, then there is no way to make a common wall. Today, they really are separate walls with separate fire ratings. What the legislature wrote doesn't make sense.
- Martha: Address “common wall” - In Clack Co, there are “attached single family dwellings”, there are developments with attached common wall single family dwellings on separate lots. It is being done.

- Martha: Cottage clusters – 1. Is there a reason that cottage clusters are defined as no fewer than four? 2. If we allow jurisdictions to define quadplex as detached, wouldn't that be a cottage cluster? If we define quadplex, duplex, etc as number of units on a lot. Limits jurisdictions to require it as one structure.
- Mark Rust: Cottage cluster – Concerned with being more restrictive than definition provided in legislation. I would like to see a point where triplexes could be three detached units on a lot. It would be a way around cottage cluster standard being four or more.
 - Ethan: Minimum compliance will allow for that.
- Mark Rust: Townhome – “common wall” confusion could be dealt with in this definition; align this with building code.
- Kol: Definition for “tri and quadplexes” is limiting to middle housing development. Bend’s definition says “triplex and duplex defined as three dwelling units on one lot; detached or attached vertically or horizontally”. Could be a good starting point for this conversation. If DLCD curtails it in the model code, it will need to rationalize it from a GHG perspective. This is extremely important; essentially that the model code allows for detached units. Will submit testimony in writing.
- Theresa: Trying to figure out why legislature would have townhouses as separate category where our code doesn’t distinguish one vs multiple lots for attached structures. Will they be treated differently? How important is the distinction?
 - Matt: They may be treated differently because of the way their defined. There may be different standards for them – topic for the next couple of parts they bring.
 - Kevin: Speculation – one possible motivation would be to provide a more affordable ownership model.
- Pauline: “Cottage cluster” Bend has revised code to make it more flexible. More coming down pipeline – we allow up to 1200 SF; we find this to be restrictive especially for single-story structures. 900 would force many two-story structures.
- Mary Kyle: Homebuilders did request townhomes for reason Kevin described.

Applicability

- Kimberli: Are you going to send out a survey like previous comments?
- Peter: Common wall and the townhouses - if we’re defining a common wall as something that’s between townhouses, but then we’re saying townhouses are on separate lots, they can’t have a common wall if they’re on separate lots. They’re actually legally two separate walls on two separate pieces of properties, and there can be no structural continuity or anything between them, so there really is no way to make a common wall.
- Martha: I know in the Clackamas County’s code, we have something called attached single-family dwellings, which are basically what are being called townhouses now. There are developments with attached common wall single-family dwellings or townhouses on separate lots, so it is being done. Cottage clusters are defined as no fewer than four detached dwelling units, or that three detached dwellings units with a courtyard not a cottage cluster? Definition of duplex versus the model code definition of duplex previously, as it now relates to triplexes and quadplexes. If we’re allowing jurisdictions to define quadplexes as detached, aren’t those cottage clusters?

- Mark Rust: My main comment is about the cottage clusters, but I also want to comment on the townhome thing, and there's a definition that you provided up a little higher, the definition of what common wall means. I think some of the confusion could probably be dealt with in that definition, just laying out what common wall means and trying to rectify the building code inconsistencies within that, potentially. On cottage clusters, I'm a little concerned with being more restrictive than the definition of cottage cluster as it's provided in the legislation and specifying that it's on a single lot or parcel. I understand the explanation of why that's being done specifically for the model code. We're looking at, for the City of Springfield, allowing them to be subdivided. We've looked quite a bit at the City of Milwaukee's standard for how they've done that to allow a division of the footprint of the cottages as the lot. Anyway, I would hope that if it's kept there in the model code, that it wouldn't be carried forward for minimum compliance or any other areas. I think we should definitely be allowed to have them be on their own individual lots. Defining that is problematic.
- Ethan: "The minimum compliance would say, I guess further clarifying this, it must define a triplex as any configuration of three dwelling units on a lot would be the minimum compliance, but then in the model code, we say that should be three attached units within one detached structure."
- Kol: Clarify that the concern is less about detached provision for duplexes; only tri and quadplexes. I wonder if we will have the opportunity to do polls about model code definition. Getting a sense from the group would be helpful.
 - Matt: Consider including question in that survey. Would help to have that sooner.
- Theresa: Why would the legislature would have had townhouses as a separate category when our code doesn't distinguish between on one lot or separate lots for attached structures? I don't know if anyone has any insight into why the legislature had them as separate things. Will they be treated any differently, or how important is the distinction?"
- Pauline: Bend has revised cottage cluster code to make it more flexible. Allows up to 1,200 square feet despite the 900 footprint mentioned in the bill. Find that to be restrictive, especially if looking to encourage some more single-story structures versus two-story. That 900 SF, depending on how large you allow the units, would force a two-story structure.

#1

COMPLETE

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Page 1: MCTAC Meeting #4 Discussion Worksheet

Q1 Is there anything in particular that you feel DLCD must address in the model code that has not been addressed? Are there any specific changes you would make to the draft model code before it is finalized for LCDC?

Establishing a maximum parking requirement remains troublesome. The proposed maximum of 2 parking spaces appears to be based on a general preference and not on factual data derived from surveying medium sized cities. Also, the supporting data DLCD is relying on from the survey does not appear to be specific to single family and duplexes, but also contains multi-family which skews the data about car ownership per household.

In addition, the proposed maximum of 2 required parking spaces creates other challenges for cities that currently offer incentives for developers. For example, some cities allow for right-of-way width reductions (eliminating some or all on-street parking) in exchange for creating a commensurate amount of off-street parking. The cost savings for a developer is significant and helpful for promoting new middle housing development. (Note: In a rural community, a developer is typically a small contractor business, or even a homeowner). The proposed parking standard will likely eliminate this incentive as it would require an increase in off-street parking. This is just one example, but the proposed standard takes away some jurisdictional opportunities to work with developers to provide lower cost alternatives to promote middle housing developments.

Q2 The draft OAR is intended to clearly outline the minimum standards a city may reasonably adopt to comply with HB2001, as discussed throughout the TAC and RAC process. Do you feel these standards provide enough guidance to local governments as they adopt their own code regulating middle housing? Are there any specific changes that you feel need to be made?

The draft OAR appears reasonable.

Q3 Do you feel the Fiscal Impact Statement and the Housing Impact Statement adequately reflect the expected impacts of the draft rules? Are there specific impacts you feel are not discussed?

This seems reasonable.

Q4 Alternative approaches will not be incorporated into the model code or administrative rules, but will be provided as guidance to local governments wishing to further facilitate middle housing development. Do you have any concerns with this approach?

Respondent skipped this question

Q5 Do you agree with the recommended organizational structure for the LMC model code? If you generally support this recommendation, do you recommend any minor refinements?

Respondent skipped this question

Q6 How will the model code relate to a city's existing density standard? Does middle housing count toward density? Does minimum or maximum density still apply?

Middle housing should count towards density. Minimum density standards should still apply. However, there should not be a maximum density standard.

Q7 Do you feel the model code adequately addresses the requirement for middle housing "in areas zoned for single-family homes" by exempting specific constrained lands?

Yes.

Q8 Definitions (memo pages 4-7) – the definitions of triplexes and quadplexes generally match the definition of a duplex and are defined as detached structures containing either 3 or 4 units. Do you agree with this definition?

Yes

Q9 Applicability (memo page 7-9) – Currently the approach is to allow middle housing in Large and Metro cities on all lots and parcels except for constrained lands (including resource, hazard, protected areas, and areas lacking sufficient infrastructure). We know that there is more nuance needed in the definition of constrained land. What specific areas should be defined as constrained?

Insufficient infrastructure is a questionable constraint, unless it's physically impossible to ever install sufficient infrastructure. In such case, middle housing could still be achieved, but perhaps at a lower density.

Q10 Applicability (memo page 7-9) – Should specific middle housing types be allowed in some areas but not all? For example, are there specific constraints that would allow for the development of a triplex but not a cottage cluster? If so, how might those criteria be organized in the model code or minimum compliance?

Respondent skipped this question

Q11 Other Topics (memo page 8) – Are there other topic sections you think should be included in the LMC model code that are not applicable to Large Cities, and therefore are not listed here?

Respondent skipped this question

Q12 Additional Comments – Please provide any general or additional comments or feedback here.

Respondent skipped this question

#2

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1: MCTAC Meeting #4 Discussion Worksheet

Q1 Is there anything in particular that you feel DLCD must address in the model code that has not been addressed? Are there any specific changes you would make to the draft model code before it is finalized for LCDC?

I am not sure where this discussion occurred but yesterday there was a comment that little interest was expressed in limiting the location of middle housing due to transportation concerns or road conditions. I am absolutely committed to insuring that those issues drive where increased density is placed. What I want to be sure of is that jurisdictions will have the flexibility to decide on those factors as well as others already in the code such as environmental and historic zones.

Q2 The draft OAR is intended to clearly outline the minimum standards a city may reasonably adopt to comply with HB2001, as discussed throughout the TAC and RAC process. Do you feel these standards provide enough guidance to local governments as they adopt their own code regulating middle housing? Are there any specific changes that you feel need to be made?

They should be as minimal as possible so that jurisdictions but more importantly the residents of them can influence growth and density.

Q3 Do you feel the Fiscal Impact Statement and the Housing Impact Statement adequately reflect the expected impacts of the draft rules? Are there specific impacts you feel are not discussed?

The language in the statement about effect on property values and taxes wasn't very clear to me. Using terms such as "greenfields" related to development is not something I understand. Maybe clarification of this language would be helpful

Q4 Alternative approaches will not be incorporated into the model code or administrative rules, but will be provided as guidance to local governments wishing to further facilitate middle housing development. Do you have any concerns with this approach?

Yes because it reflects a bias toward a more top down "cookie cutter" approach which won't necessarily work for all or maybe even any jurisdictions

Q5 Do you agree with the recommended organizational structure for the LMC model code? If you generally support this recommendation, do you recommend any minor refinements?

Yes

Q6 How will the model code relate to a city's existing density standard? Does middle housing count toward density? Does minimum or maximum density still apply?

Respondent skipped this question

Q7 Do you feel the model code adequately addresses the requirement for middle housing “in areas zoned for single-family homes” by exempting specific constrained lands?

Yes but add my comments under the first question

Q8 Definitions (memo pages 4-7) – the definitions of triplexes and quadplexes generally match the definition of a duplex and are defined as detached structures containing either 3 or 4 units. Do you agree with this definition?

Respondent skipped this question

Q9 Applicability (memo page 7-9) – Currently the approach is to allow middle housing in Large and Metro cities on all lots and parcels except for constrained lands (including resource, hazard, protected areas, and areas lacking sufficient infrastructure). We know that there is more nuance needed in the definition of constrained land. What specific areas should be defined as constrained?

as above. The bill does not require middle housing on all lots and parcels. Given that the purpose of the code and rules is to implement a bill that, in my opinion, was not well thought out or even necessary then this issue needs to be front and center.

Q10 Applicability (memo page 7-9) – Should specific middle housing types be allowed in some areas but not all? For example, are there specific constraints that would allow for the development of a triplex but not a cottage cluster? If so, how might those criteria be organized in the model code or minimum compliance?

Respondent skipped this question

Q11 Other Topics (memo page 8) – Are there other topic sections you think should be included in the LMC model code that are not applicable to Large Cities, and therefore are not listed here?

Respondent skipped this question

Q12 Additional Comments – Please provide any general or additional comments or feedback here.

Respondent skipped this question

#3

COMPLETE

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Page 1: MCTAC Meeting #4 Discussion Worksheet

Q1 Is there anything in particular that you feel DLCD must address in the model code that has not been addressed? Are there any specific changes you would make to the draft model code before it is finalized for LCDC?

I drafted these comments apply more-or-less to both the Model Code and the Minimum Standards, but some of the comments apply only to one or the other.

1. Define “parking space.” I suggest something like, An area at least __ ft by __ ft with a gravel or paved surface.
2. Clarify the definition of “detached single-family dwelling or structure.” As written, it includes uninhabitable structures like sheds or any other kind of “structure.”
3. Refine the definition of “unreasonable costs or delay”: As written, it is too general and appears to require that permitting for two dwelling units (i.e., the duplex) be no more than that for one unit. Generally, “unreasonable” means something more than just “additional.”
4. Parking: I have two issues here: First, it’s okay to say a duplex needs only two spaces — unless the second unit is added to a SFD that already has two spaces. (As I read the data handed out yesterday, roughly three quarters of renters in most cities still have at least one car, and more have two cars than none.). Second, if one can’t park a car close to one’s dwelling, it makes owning a plug-in vehicle nearly impossible— not a result that we want.

Q2 The draft OAR is intended to clearly outline the minimum standards a city may reasonably adopt to comply with HB2001, as discussed throughout the TAC and RAC process. Do you feel these standards provide enough guidance to local governments as they adopt their own code regulating middle housing? Are there any specific changes that you feel need to be made?

Yes, generally. On substance, please see my comments above.

Q3 Do you feel the Fiscal Impact Statement and the Housing Impact Statement adequately reflect the expected impacts of the draft rules? Are there specific impacts you feel are not discussed?

These look very good to me.

Q4 Alternative approaches will not be incorporated into the model code or administrative rules, but will be provided as guidance to local governments wishing to further facilitate middle housing development. Do you have any concerns with this approach?

I like the general approach. However, I note some inconsistency in our approach to “alternative” (i.e., recommended) design standards. Many of those will increase costs with little practical benefit, yet the response to medium cities’ planners about parking was that the cost of adding would shift costs to renters who don’t have cars and that the market will take care of actual parking needs. Why not take the same approach with things like orientation of the front door? I don’t disagree with the design concepts, but I don’t see how they advance our mission here.

Q5 Do you agree with the recommended organizational structure for the LMC model code? If you generally support this recommendation, do you recommend any minor refinements?

Yes!

Q6 How will the model code relate to a city's existing density standard? Does middle housing count toward density? Does minimum or maximum density still apply?

I defer to others on this.

Q7 Do you feel the model code adequately addresses the requirement for middle housing "in areas zoned for single-family homes" by exempting specific constrained lands?

Yes, I think so. As to issues like proximity to transit or commercial areas, I think that is one thing the market will take care of: people tend to pick the location of their home first.

Q8 Definitions (memo pages 4-7) – the definitions of triplexes and quadplexes generally match the definition of a duplex and are defined as detached structures containing either 3 or 4 units. Do you agree with this definition?

OK.

Q9 Applicability (memo page 7-9) – Currently the approach is to allow middle housing in Large and Metro cities on all lots and parcels except for constrained lands (including resource, hazard, protected areas, and areas lacking sufficient infrastructure). We know that there is more nuance needed in the definition of constrained land. What specific areas should be defined as constrained?

I think the proposed approach seems about right.

Q10 Applicability (memo page 7-9) – Should specific middle housing types be allowed in some areas but not all? For example, are there specific constraints that would allow for the development of a triplex but not a cottage cluster? If so, how might those criteria be organized in the model code or minimum compliance?

Again, I defer to others.

Q11 Other Topics (memo page 8) – Are there other topic sections you think should be included in the LMC model code that are not applicable to Large Cities, and therefore are not listed here?

Respondent skipped this question

Q12 Additional Comments – Please provide any general or additional comments or feedback here.

Thanks very much for a lot of excellent work on a complex subject!

#4

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1: MCTAC Meeting #4 Discussion Worksheet

Q1 Is there anything in particular that you feel DLCD must address in the model code that has not been addressed? Are there any specific changes you would make to the draft model code before it is finalized for LCDDC?

Respondent skipped this question

Q2 The draft OAR is intended to clearly outline the minimum standards a city may reasonably adopt to comply with HB2001, as discussed throughout the TAC and RAC process. Do you feel these standards provide enough guidance to local governments as they adopt their own code regulating middle housing? Are there any specific changes that you feel need to be made?

I sent a separate document marked up with questions and suggested changes to the OARs. -Brian Martin, City of Beaverton

Q3 Do you feel the Fiscal Impact Statement and the Housing Impact Statement adequately reflect the expected impacts of the draft rules? Are there specific impacts you feel are not discussed?

Respondent skipped this question

Q4 Alternative approaches will not be incorporated into the model code or administrative rules, but will be provided as guidance to local governments wishing to further facilitate middle housing development. Do you have any concerns with this approach?

Respondent skipped this question

Q5 Do you agree with the recommended organizational structure for the LMC model code? If you generally support this recommendation, do you recommend any minor refinements?

Respondent skipped this question

Q6 How will the model code relate to a city's existing density standard? Does middle housing count toward density? Does minimum or maximum density still apply?

Make sure any relaxation of minimum density does not accidentally open the door to allowing unlimited duplexes on a lot where the intention was to allow one duplex in a location where one house formerly was allowed.

Q7 Do you feel the model code adequately addresses the requirement for middle housing “in areas zoned for single-family homes” by exempting specific constrained lands? **Respondent skipped this question**

Q8 Definitions (memo pages 4-7) – the definitions of triplexes and quadplexes generally match the definition of a duplex and are defined as detached structures containing either 3 or 4 units. Do you agree with this definition?

I think the definition that has the three dwellings in one structure is cleaner. Some are advocating for a definition that allows them to be detached. That is not an undesirable outcome, but I am trying to figure out how those will not be considered detached single-family dwellings when agencies and cities are looking at other rules and regulations, including ORS 197.312 (5)(a), which says: "A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design." In addition, if four detached structures were on a lot, one or more of them might also be able to be considered an ADU rather than part of the four-plex, which would perhaps allow additional units to "complete" the fourplex. So the order of things matters as well. In general, I guess clarity is desired. Can some tight definitions, some clear standards about how detached triplexes, fourplexes and such as treated and a legal opinion that they will not each be automatically allowed an ADU might be necessary to ensure cities know what they are getting. This is not easy. I appreciate your continued work on this problem. Because overall, four small houses on a lot and four units in one building are not that different from each other (although cities might want to consider different design standards for those two situations).

Q9 Applicability (memo page 7-9) – Currently the approach is to allow middle housing in Large and Metro cities on all lots and parcels except for constrained lands (including resource, hazard, protected areas, and areas lacking sufficient infrastructure). We know that there is more nuance needed in the definition of constrained land. What specific areas should be defined as constrained? **Respondent skipped this question**

Q10 Applicability (memo page 7-9) – Should specific middle housing types be allowed in some areas but not all? For example, are there specific constraints that would allow for the development of a triplex but not a cottage cluster? If so, how might those criteria be organized in the model code or minimum compliance?

The answer to the "some but not all" question will vary. It will be different for different cities and situations. Regarding minimum compliance, it is possible the state might be able to include some "don't do this" and "do do this" statements in minimum compliance, although I'm not sure what those would be, but there should be some room in the middle for cities to propose solutions that work for different contexts. The solutions should not be designed to frustrate the intent of the statute.

For C2, the minimum compliance should not be the same as the model code. Cities should be allowed to craft regulations regarding where middle housing types other than duplexes should be allowed be allowed as long as they are reasonable. That is why the legislation says every lot for duplexes but does not specify every lot for the other middle housing types. In general, allowing cities to prepare reasonable standards, justify them and have DLCD evaluate them is a better way to go than a blanket prohibition that is inconsistent with the statute requiring the middle housing types in "areas" rather than on every lot.

Q11 Other Topics (memo page 8) – Are there other topic sections you think should be included in the LMC model code that are not applicable to Large Cities, and therefore are not listed here? **Respondent skipped this question**

Q12 Additional Comments – Please provide any general or additional comments or feedback here.

Please listen to planners from around the state on the parking regulations and consider different situations of on-street parking availability (or lack thereof); street design/condition; availability of transit or sidewalks; greenfield vs. infill; and how context matters. I don't know the solution, but is there a path where a city can demonstrate their code is reasonable and does not cause unnecessary costs or delay?

#5

COMPLETE

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Page 1: MCTAC Meeting #4 Discussion Worksheet

Q1 Is there anything in particular that you feel DLCD must address in the model code that has not been addressed? Are there any specific changes you would make to the draft model code before it is finalized for LCDC?

Thank you for revising the parking standards so that no spots are required for duplexes. This is forward-looking and cities still have the ability to fine tune this (within the bounds of the OAR).

Q2 The draft OAR is intended to clearly outline the minimum standards a city may reasonably adopt to comply with HB2001, as discussed throughout the TAC and RAC process. Do you feel these standards provide enough guidance to local governments as they adopt their own code regulating middle housing? Are there any specific changes that you feel need to be made?

While I understand that defining duplexes as attached units is appealing since it's simple, I am concerned that it may reduce flexibility and housing production. I would encourage allowing for detached units as well. I am curious if the state's legal counsel has a view on whether defining duplexes as attached only is a reasonable siting and design standard. I can see an opposing argument since ADUs are allowed to be detached. It may be useful for the OAR to require cities to allow attached and detached units.

Thank you for capping required parking at 2 spots.

Q3 Do you feel the Fiscal Impact Statement and the Housing Impact Statement adequately reflect the expected impacts of the draft rules? Are there specific impacts you feel are not discussed?

Respondent skipped this question

Q4 Alternative approaches will not be incorporated into the model code or administrative rules, but will be provided as guidance to local governments wishing to further facilitate middle housing development. Do you have any concerns with this approach?

No concerns

Q5 Do you agree with the recommended organizational structure for the LMC model code? If you generally support this recommendation, do you recommend any minor refinements?

Respondent skipped this question

Q6 How will the model code relate to a city's existing density standard? Does middle housing count toward density? Does minimum or maximum density still apply?

I need more discussion of this to understand the considerations.

Q7 Do you feel the model code adequately addresses the requirement for middle housing "in areas zoned for single-family homes" by exempting specific constrained lands?

Yes, this should be broadly interpreted. I don't think the model code should get any more specific since it would begin impinging on housing production in ways that don't make good policy sense. If a property can't physically accommodate a particular housing type, it won't get built, so I don't think we need to be overly specific here.

Q8 Definitions (memo pages 4-7) – the definitions of triplexes and quadplexes generally match the definition of a duplex and are defined as detached structures containing either 3 or 4 units. Do you agree with this definition?

I believe that detached units should also be encouraged for maximum flexibility and to ensure that we adhere to reasonable siting and design standards.

Q9 Applicability (memo page 7-9) – Currently the approach is to allow middle housing in Large and Metro cities on all lots and parcels except for constrained lands (including resource, hazard, protected areas, and areas lacking sufficient infrastructure). We know that there is more nuance needed in the definition of constrained land. What specific areas should be defined as constrained?

Respondent skipped this question

Q10 Applicability (memo page 7-9) – Should specific middle housing types be allowed in some areas but not all? For example, are there specific constraints that would allow for the development of a triplex but not a cottage cluster? If so, how might those criteria be organized in the model code or minimum compliance?

No. I think this will be adequately sorted out by market forces. If a site can't physically accommodate a particular housing type, it won't get built.

Q11 Other Topics (memo page 8) – Are there other topic sections you think should be included in the LMC model code that are not applicable to Large Cities, and therefore are not listed here?

We should discuss unit size limits to enhance affordability

Q12 Additional Comments – Please provide any general or additional comments or feedback here.

Respondent skipped this question

Rulemaking Advisory Committee #5

Zoom-only Meeting

April 2, 2020

Key Insight Summary

Medium City Duplex Standards – Ensuring specific standards in the Model Code are consistent, legally robust, and useful for jurisdictions are a priority for RAC members. While current practice can inform the model code and minimum standards, it is important that they facilitate duplex development.

Protective Measures – Ensuring middle housing is developed in a manner that minimizes risk posed by natural hazards and minimizes impact to goal-protected areas, including historic, natural, and coastal resources.

Minimum Parking – There is significant debate among RAC members as to the appropriate amount of minimum parking specified in the medium city model code and minimum standards. While some RAC members feel that preserving flexibility for developers, minimizing barriers to housing development is critical, and reducing automobile mode share and greenhouse gas emissions, others feel that it is important to provide jurisdictions as much flexibility as possible to regulate middle housing development to respond to local conditions. Providing jurisdictions with tools to manage on-street parking issues will be important as part of the rulemaking process.

Large Cities Model Code – There is agreement among RAC members that definitions and standards for the development of various middle housing types will need to balance distinguishing each development type, maintaining consistency with building code and form, and maximizing flexibility for local jurisdictions and middle housing development.

Housing Production Strategies – RAC members agree that development of “buckets” and specific tools/strategies for Housing Production Strategies should be diverse and allow for a wide degree of different strategies from various sectors (private, local, state, and federal-based resources or strategies). Additionally, it will be important for Housing Production Strategies keep equity as a core consideration and ensure that strategies consider factors such as displacement and retention of naturally-occurring affordable housing.

Meeting Summary

RAC Members:

- Alexis Biddle
- Alison McIntosh
- Allan Lazo
- Amanda Ferguson
- Angel Falconer
- Brian Martin
- Brian Shelton-Kelley
- Chris Pryor
- Chris Storey
- Colin Cooper
- Kimberli Fitzgerald
- Lynne McConnell
- Mark Rust
- Michael Boquist
- Michelle Glass
- Nancy McDaniel
- Pauline Hardie
- Peggy Lynch
- Sarah Adams-Schoen
- Shannon Vilhauer

- Damian Syrnyk
- Debbie Aiona
- Derrick Tokos
- Drew Farmer
- Ed Sullivan
- Ellen Miller
- Heather Richards
- Hope Beraka
- Jeannine Rustad
- Jeff Blaine
- Jes Larson
- Jesse Sharpe
- Kol Peterson

- Stephanie Jennings
- Ted Reid
- Theresa Cherniak
- Tim Morris

Staff/LCDC:

- Ethan Stuckmayer
- Sean Edging
- Kevin Young
- Samuel Garcia
- Robert Mansolillo
- Sylvia Ciborowski
- Anyeley Hallova
- Jerry Lidz

Definitions.

The definition of common wall was taken out, that was also removed from the definition of duplex. Dwelling unit was also taken out. Local jurisdictions can use their own definition for dwelling unit and that should be fine. Unreasonable cost and delay is being added to the Administrative Rules. The definition of duplex is the same, the reference to the common wall was removed. It was recommended to keep the statement regarding developments where there's overlap between a duplex and a single-family detached with an internal ADU. Under the code, the property owner is allowed to declare which standards they would like to go with, either the duplex or the single-family with ADU. There are advantages to either one, so that is really up to the applicant at the time. For minimum compliance, it defines it as two; we added "detached." I believe the previous version had "attached" but we corrected that to say "detached" which was what we really intended and this will give more flexibility to cities who already have that in their code. The OAR, though, doesn't specify attached or detached, so that will give some leeway to cities who have either/or.

- Theresa Cherniak strongly suggested that the definition for duplex state that it's two primary dwellings. Then on the Minimum Compliance column for duplex, it says "the definition must distinguish a duplex from a combination of a single-family detached, etc." I'm wondering, does it have to be in this definition itself or could a jurisdiction just rely on its definitions for duplex and for accessory dwelling units to make the distinction?
 - Ethan answered that the intent behind the minimum compliance is the knowledge that cities already have their definition that they are currently using so they would wait and defer to the existing definition of an ADU that the city is using to distinguish between the two.
- Ellen hoped the Model Code would be more similar to the minimum compliance and would ask for the consideration of the duplex means a structure – or a duplex is considered comprised of two units rather than a detached structure with two units attached and would like it to be comprised of two dwelling units on the site.
- Mary Kyle recommended that there be not trying to blend the ADU and duplex in this language. She thought we all have the same shared outcome - that the applicant is the one who gets to choose, and I think the simplest way and most practical way is to have separate

codes for what is an ADU and what is a duplex. They're two separate things, and I think this confuses it and allows some potential misuse of it.

- Lynne McConnell agreed with Mary Kyle's suggestion to leave ADUs out of this definition. She asked if DLCD anticipates SDCs will be considered as part of the unreasonable cost and burden criteria or is that completely separate, in which case perhaps that should be stated in the commentary? She also asked if SDCs might be considered within the discussion of not subjecting any development to unreasonable cost burden, can we put out two different SDC amounts through single-family versus a duplex?
 - Ethan replied that the project team has tried to match the Model Code language with the existing definitions of a duplex that a city might already have or medium cities might already have. Typically, those are "one building or structure with two units within that one structure," so that's what we're trying to match there. So it's "one detached structure on a lot that is comprised of two dwelling units." We tried to match it there. In the Minimum Compliance, it opens up to just say "any two units on a lot", which would match – a city could go forward with that wide of a definition or they could say they should be detached or attached or any combination. Then in regard to the ADU, the kind of overlap in the definition, ultimately this language here in the Model Code gives the option to the property owner to elect which kind of code pack they will go down, the ADU path or the duplex path. Yes, the discussion of unreasonable cost and delay as it relates to siting and design of a middle housing type or housing type, SDCs would be outside of that conversation. There is language in the bill that would require a city to consider things like waiving SDCs or adjusting SDCs to increase the affordability of middle housing. So as a city is submitting their development codes and comprehensive plans to DLCD for review and comment to comply with House Bill 2001, that is one of the requirements in their findings is to kind of consider what that would look like or how they might adjust those to increase the affordability of middle housing. So it's not part of the Model Code itself, it's part of the review process and the finance process for our plan update.
- Michael commented on the choice between calling something a duplex and an ADU. The City of La Grande changed our code probably about two years ago now in relation to be more accommodating for the cottage home industry and we allowed two cottage homes on a lot that would then be defined as a duplex with detached structures and we have different setback standards for primary dwellings versus accessory dwellings. If a property owner chooses to place that second cottage home or that unit within the accessory building setback parameters, then they don't get a choice, it's automatically defined as an ADU. Whereas if they put it within the primary setback parameters, then it's automatically defined as another property dwelling and therefore a duplex. He didn't know whether the definition in the model code is in conflict with their current one.
- Drew agreed that they have codes related to ADUs. Some not as tight restrictions on parking as duplexes would because the expected or intended use of the ADU is different in content from what we would expect the usage of a duplex to be. I wouldn't want to leave the

determination if something is a duplex or an ADU up to the developer because I can see the move towards ADU just being a way to get out of putting in a parking space for a larger structure, and I wouldn't want to have to go back and change our ADU restrictions to now include parking spaces just because a developer may someday decide that they want to skip around parking spaces that are needed in a specific area. So I would be inclined to have a definition of duplex that is separate from ADU and not leave that determination up to the developer.

- Peggy reiterated that SDCs shouldn't be part of the meeting as it is inappropriate and it should not be an unreasonable cost to this code as a totally separate issue that needed its own separate discussion.
- Mark Rust commented that the definition of unreasonable cost and delay should include a reference to clear and objective standards.
- Nancy was confused that under the minimum code, "the definition must distinguish a duplex from a combination of a single-family detached in an ADU," whereas the model code says that the definition might include both.
 - Ethan explained the Model Code, the way it's written does distinguish what a duplex would be from an ADU for all intents and purposes, but there still may be some overlap between the two even with that distinction.
- Jeff commented on adding a reference to clear and objective standards is that we need to be very careful that for communities that implement two-track systems, both the clear and objective and discretionary track that the definition doesn't create a conflict for that second option of a discretionary track. Second is to provide them in written form. They have to be careful that in those references we are mindful of those other standards that might apply.
 - Ethan explained minimum compliance of a duplex might actually be more restrictive than we intended it to be written. The language in the OAR is a duplex is defined as any two units on a lot or a parcel. With the comments that we received at the TAC on Monday, I think that was a fair point saying that if a jurisdiction comes in and wants to do, define a duplex as two detached units, that that might not fully be in compliance with the minimum compliance standard. DLCD is still tweaking the language. With regards to how this might change or be different or look or feel differently for triplexes and above as we get to large cities. DLCD is still waiting through that and trying to figure out how that language should actually look and feel.

Section C, Applicability.

There weren't many changes here from the last version. The OAR has a section pertaining to goal-protected areas, and there is a little section here that mentions that, but the OAR section is still in development. It will have a little more detail than what is referenced here, that very last paragraph of Applicability. "Duplexes developed under this model shall comply with protective measures including plans, policies, and regulations adopted pursuant to statewide land use plan and goals." In the OAR, there'll be a different section that will have a little more detail, but that is still being developed.

Section D, Relationship to Other Regulations.

The biggest change was in number 3, the Public Works Standards. There was a statement in the Public Work Section individual utility service connection to each duplex unit maybe required, that was taken out for this version. I know there were some questions about that last time and so we decided to take that statement out.

Section E, Permitted Uses and Approval Process.

No major changes.

- Theresa commented in general that “should” should be used instead of “may” as should is a judgment and a bit more directive than may.
- Peggy added that the league is very interested in seeing the minimum compliance section related to the goal-protected areas. They’re very concerned to make sure that the places that shouldn’t be built shouldn’t be built versus places that should be built in. The League is very interested in seeing the minimum compliance around goal protected areas. Among their concerns is where and how wetlands fit.
 - Ethan replied that this is being shored up and agreed that that will work the way as it was intended.
- Hope followed up on Peggy’s comment that if land is appropriate to build on, it would be appropriate to apply the duplex rule.
 - Ethan added the way that it will operationally work is that any buffering or anything like that that would take place for a single-family detached dwelling or really any other building in the wetlands or resource-protected areas would work very similar in this Applicability Section as well.
- Mary Kyle asked on the DOJ’s opinion on the issue of an existing home that has an ADU, do they also get to add a duplex.
 - The preliminary opinion was that if a single-family detached home with an ADU hopes to convert into a duplex, we would, from the state level and the model code and things like the minimum compliance, it would be creating a nonconforming situation at the local level where an ADU is existing without a single-family detached home which is what Senate Bill 1051 intended to do is to link those single-family detached with an ADU would create a nonconforming situation. If the local level does not allow such a step, DLCDC would not allow this also.
- Theresa followed up Peggy’s comment that they are also interested how it would work with other goals particularly with Oregon’s Flood Plain Regulations and protection of riparian areas where regulations allow at least one dwelling unit so that their economic use of the land and asked whether this would mean allowing a duplex once we get into the middle housing code or maybe more?
 - Ethan replied that they are still work through that issue on how to best manage those lands as well as in accordance to House Bill 2001.

Section F, Development Standards.

There weren’t any major changes to parts one through four, which is minimum lot size, maximum density, setbacks and height.

- Theresa asked about LUBA Case 2019-115, where it actually talked about minimum lot size not being a siting and design criteria. She thought that probably minimum lot size shouldn't be addressed at all in this section.
- Ethan will have their DOJ folks look at that particular LUBA case.
- Kol asked how 15 feet was established and commented that we should be careful not to rely on existing middle housing standards as these are terrible but on best practices. Also that the model code is the default code, kind of the default code, it should be something that would not prevent housing from being developed.
- Ethan explained the folks at Angelo Planning Group surveyed codes for medium cities, and this closely matches what they found in the existing codes for medium cities as it relates to single family. We need to make sure that we're understanding that we have to come down on a standard for the model code because it needs to be written in a way that can be applied directly if a city does not act. In a way to provide some additional guidance on those standards.
- The Commissioner agreed that they should rely on best practices.

Parking

- Sean presentation on parking data
 - The basis for the minimum parking research stems around trying to find out what is a reasonable basis for minimum parking standards in terms of what local jurisdictions are allowed to require in terms of minimum parking standards.
 - There were two key questions based on what we've heard from folks. One of them that we've heard is that a lot of people in different areas might have more reliance on the automobile to get around, and therefore, it's much more important that we provide parking for these folks. The follow-up question for that is then, "What is that actual demand? How can we get at that using data that is available to us to get a better understanding of what parking demand looks like in different cities?" Then the second piece of that is, all right, given this demand, what are the cost and impacts associated with requiring having a government requirement essentially for requiring parking spaces that are built and ultimately, who ends up paying those costs.
 - To get a better idea of what we could anticipate for demand in cities, we took a look at just all cities that were affected by HB 2001 and 2003. Unfortunately, because of the limitations of ACS data, I was not able to look at urban and incorporated say, Clackamas County, Washington County, but to look at their vehicle ownership rates and try to see, try to parse out based on what data is available to us, what could we expect to see in terms of vehicle ownership for just different jurisdictions based on household characteristics that is available to us?
 - They found that renters typically have fewer cars available to their household than owners and the vast majority of households are really one- or two-person households, which tend to have fewer vehicles available than larger households.
 - One criticism that arose last Monday was the presence of multi-family units being included in this vehicle analysis because people living in multi-family units would be much less likely to drive or have as many vehicles. For example in La Grande, when it came to multi-family units, generally, what we think of as a multi-family unit for the purpose of middle housing, five or more units attached, that only really comprises about 17% of the total households or about a third of all renters in that community.

- We need to recognize that ACS is far from a perfect data source, but at the same time it is the best available data source that we have to assess parking needs in jurisdictions throughout the state.
- Whatever we recommend has to be rooted in some kind of factual basis that is supported with data and analysis. We can't just rely on our own experiences as planners and managing parking in that framework.
- Also, he emphasized the impact of the governor's Executive Order 20-04 which directs state agencies to exercise any and all authority and discretion vested in them by law to help facilitate the reduction of greenhouse gases in Oregon as there is a very well-established correlation between minimum parking standards and automobile mode share.
- There's emerging evidence using epidemiological studies or epidemiological frameworks that correlate smoking with lung cancer that there's actually a pretty robust and compelling evidence that imposing minimum parking standards actually creates an increased automobile mode share.
- In short, based on everything that I've seen and data and literature is I am not seeing a demand that has been reported to me that is supported by the best available data and evidence that I have. Based on what I've studied about the cost of minimum parking requirements, they cost thousands of dollars per space. They really impact households with limited income, especially, those who don't drive, and they, by definition, result in fewer units, especially, the types of households that we're going for with middle housing, smaller and more affordable units. Then finally just on the Climate Change piece, we have pretty compelling evidence that this increases automobile mode share, which we have a legal obligation to reduce under Executive Order 20-04.
- The off-street parking requirement for the model code is to say no off-street parking is required and then, the jurisdiction to comply with the minimum compliance could require no more than two off-street parking spaces. This sets up conversations at the local level regarding how the community values parking.
 - Derrick Tokos - I am hoping you can share a couple of comments I have regarding the model on-street parking credit language. We implement this type of program in parts of Newport. You might change (b) to indicate that on-street spaces meet a City's dimensional standards (whatever they may be). The second change would be to (c). You might want to change "abutting" to "completely abutting." How spaces that partially abut a property are counted comes up quite frequently in our jurisdiction.
 - Peggy Lynch - Concern that, by saying "NO parking required" in model code, this element may force jurisdictions to do their own code and not use the Model Code. As to GHG Reduction, there is an emphasis on electric vehicles...those take parking spaces, too. So I don't accept this argument. There is a difference between duplex development and the other middle housing which really does focus on rental housing.
 - Lynne: lot coverage and FAR, this might be an opportunity to apply standards to duplexes that are not applied to single-family homes
 - Timothy: rideshare programs vs min. parking standards
 - These are requirements, not allowances.
 - Michael: a lot of the data was based on apartments 3+ apartment unit size. Hard to use data from apartments to justify single-family standard

- Michael: parking costs thousands of dollars per space. Price of parking space depends on whether or not it's covered/not. Roughly \$1500 to pave/concrete space, \$500 for gravel space. Garage could be thousands of dollars, but not arguing that case.
- Michael: 2-space max, no discussion of accessibility of these spaces. By having a 2-space parking requirement
- Michael: even if household has less vehicles, they have visitors who will need to find place to park. We are creating an excessive standard not based on all sound facts and justification.
 - Ethan: we're trying to create a standard that works across all State jurisdictions, which is tricky.
- Colin Cooper: 2040 growth concept → we've had to regulate parking across Portland Metro. We have ACS data
 - As the economy has improved, more people have been buying cars. We've had flat transit ridership in the last decade, even in Orenco station. We've been trying to reduce parking everywhere. We're starting to see more conflict
 - Connect required duplex parking to local government. We need to give flexibility to local jurisdictions. We need flexibility for parking, not just a flat standard
 - I wanted to make it clear that Hillsboro agrees with the proposal and it is consistent with Hillsboro's now decades long policy direction to reduce parking. I just have a professional belief that we need to ensure that the local jurisdictions have flexibility. So it seems reasonable to limit jurisdictions from requiring any more than the number of parking spaces for a single-family.
- Hallova: support decision for no requirement on parking, and then put a maximum threshold on unreasonable cost and delay. Great to allow developer to decide parking, flexibility in affordability in unit is also good.
 - We shouldn't build to the status quo. That is what all of these comments are trying to do. Your requirement is simple and straight to the point. Not complicated. I think its great. People aren't getting that a City can change a requirement and implement more parking if they want.
- Jeff:
 - 1) Emphasize the need for data-driven decisions here. Maybe there could be a 2-ceiling approach. First ceiling is what we have proposed. Second ceiling to prevent abuse from jurisdiction, but needs to provide a study to justify additional parking need. Tie flexibility by giving credit to affordable housing projects.
 - 2) Vehicle ownership doesn't necessarily correlate well with multi-family complexes. Can we get a consultant who is a specialist on parking? Rely on their experience to help us create parking requirements for larger cities.
- Jerry: unreasonable cost and delay means unforeseen consequences. We are not telling cities they cannot keep off-street parking for homes.
- Theresa: jurisdictions would likely regulate parking scenarios. We also can't assume these will all be small units. We need to confirm in the rulemaking language whether this is above and beyond....(lost her)
 - Are these 2 spaces for a duplex unit or total duplex?
 - Ethan: no more than 2 for total duplex on the lot

- Heather: want to remind everyone this is a model code that's plug and play for communities between 10-25k. They do not have staff for public process. Sounds disingenuous. There's technical assistance on their end, but that's still time on their end. We're talking about duplexes, so ACS data concludes structures that have much larger units than duplexes. Multi-family units typically have less vehicles because we are deliberately trying to put them near transit lines, which are very limited in these medium sized cities. We can't pretend that a duplex is smaller than a single family unit because there's no data to support it. Really like Jeff's comment, hope we can hire someone/consultant with expertise on parking so that we can move something forward. Hope we can arm communities with tools to create more supply in housing
- Drew: each duplex unit needs to have more than 2 parking spaces. There is also a rule that mandates we alleviate poverty, and sometimes having a vehicle in a rural community brings access to employment due to transportation barriers already in place
 - Duplexes are generally set further back to make it look like a single-family home.
- Peggy: Regarding GHG Emissions bill: Electric vehicles also take up space.
 - If we make model code more restrictive than minimum compliance, people will be forced into minimum compliance. Let's give flexibility
- Ted Reid - Hi, rather than taking up more time. I'd just like to express support for the existing draft model code and OAR regarding parking. As Commissioner Hallova noted, this is about planning for a future we want (and we have an executive order regarding greenhouse gases). For this effort, it's about facilitating middle housing. This is not simply about providing all of the parking that may be in demand.

Design Standards

From the previous versions, there really weren't many changes here. There was a sentence pertaining to conversion of a single family detached to duplex being subject to design standards, but that was removed. For the minimum standard side, it states local governments are not required to apply the design standards but if they do, they may only apply clear objective standards that are also applied to single family structures. The last section which is H, was non-conforming development but it was changed to duplex conversions, and the update was really to clarify and to apply it to all duplex conversions and not just non-conforming ones.

- Peggy added that if we made the model code so much more restricted than the minimum compliance, people will be forced to use minimum compliance, and she will recognize Heather's comment related to that.
- Kimberli pointed out the applicability of the Goal 5 not having to comply with the clearing objective. It's been made before but she didn't want that to get lost in the shuffle.

OARs for Middle Housing, Division 46

- Meant to encompass medium and large cities, only has medium cities at this point
- Jeff noted that it looked like the duplex definition didn't appear to be updated to reflect the current language that was in the table for the minimum requirements and was wondering if that's intentional or an oversight. Also asked about the following sections for model code and his understanding was the intent was not to adopt the model code in rule, that the minimum standards

would be adopted in the rule, and that the model ordinance would only be by reference within the rule.

- In section 103, it would say for the purposes of assisting the local governments, the model code is adopted and the subsection may be applied to local governments. The model code completely replaces that language and it will be hyperlinked with an X placeholder. It will be a clickable link. That will pull up a separate document, the model code language itself.
- Lynne: definition for the word “consider” for certain policies. Public hearings? Agenda items? Etc.?
 - Ethan: “shall consider” means while cities are submitting to PAPA, they should include findings from A, B, C
 - Mary Kyle: agree about the use of the word “consider”. We should flush it out more.
 - Has other comments in the couple of sections related to demonstrating that standards are not unreasonable cause for delay both in the definition of that and in subsection 103 sub 2. That it says either don’t put any standards on duplexes that are beyond a single family standards and don’t put anything that’s beyond the clear in objective standards that apply to a single family, and that those are good starting points but they’re not enough.

Fiscal/Housing Impact Statement

- Jeff Blaine: Communities that don’t want to go through this effort can rely on model code
 - SDCs: talks about revenue impacts to agencies, but doesn’t talk about impacts to implementing bills on fees themselves. This will increase costs and SDCs across the board.
 - Impacts to single family homes being impacted by property being devalued by multifamily should be addressed here.
- Anyeley: if there was any analysis done on that, it would also need to include what people are doing currently because she thinks many of us know that a lot of people have garages and don’t use them to park their cars in them.
- Damian: I have a comment on -00010(3)b). Instead of Goal 5: Historic Districts, I suggest being broad to refer to Goal 5: Historic Resources, to capture historic structures in districts and on their own.

Large Cities Model Code

- Lynne: the duplex and detached need for a variety of reasons, including things like the cost of firewalls and how challenging that can be if you’re adding an additional unit to an existing home. She also feels very strongly that we should not be specifying building form when we had to use larger units. That that’s not the role of the state at this point.
- Hallova: cottage cluster could be the catch-all category for detached units.
- Lynne: cottage clusters typically require open space, which is not necessarily required for other types

IBTER

- Definitions are important and is a fairly complex issue.
- Parameters are broken down into the language that descends directly from the bill itself.

- What we're talking about with the infrastructure-based time extension request is "An identified infrastructure constraint within a defined area where additional dwelling units would exacerbate the existing or anticipated service deficiency that is occurring or may occur by December 31st of 2023." That essentially is what we get from the language in House Bill 2001, so either it's an existing or an anticipated infrastructure constraint in the near-term.
- The types of infrastructure that we are looking at are water, sewers, storm drainage, or transportation infrastructure. Then going from there, the bill itself requires the applications to have a plan of actions to remedy the deficiency in those services.
- Deadlines are pretty short on these applications which is part of what's driving this rule-making effort. For the medium cities, the deadline is embedded in House Bill 2001. For those applications, that would be December 31st of 2020. And then for the large cities, June 30th of 2021.
- We're wanting to do what we can to get these rules adopted as quickly as possible so that local governments actually have time to do the work and we have time to distribute funding to assist that work.
- Our schedule now is to have an initial review with the Land Conservation and Development Commission in July, with potentially a follow-up adoption in early August to allow as much time as we can to get that done.
- Moving on to the next pages of the memo in terms of parameters.
 - Where we've gone from the language in the bill is then looking at the very fundamental issue of redevelopment rates and what we would anticipate.
 - We've looked at some data. We've looked at the language in the bill related to the anticipated development over the 20-year planning horizon and arrived at number of redevelopment rate of 1% within an [in-fill] development context. That would be a currently developed area where redevelopment may occur.
 - We're looking at anticipated increase of 1% in terms of additional dwelling units produced by middle housing allowances by up to that period of December 31, 2023. That's in the developed areas.
 - In the greenfield areas, and those would be areas that are not currently developed, we're building new infrastructure to serve those areas.
 - Developers could avail themselves of these new allowances probably more readily than in a developed area. We're looking at a 3% assumption. Again, this is all up to that December 31, 2023 deadline. The reason those rates are important is that they help us to get to the anticipated additional impact on infrastructure.
 - Another key issue that we've discussed in the TAC are potential situations where a local government currently permits single-family detached dwellings within an infrastructure-constrained area.
 - We'll be putting these into rule language at some point very soon and they will come back to you in that form, and we are continuing to work through the different infrastructure type.
- Jeff: unimproved infrastructure discussion and Emergency access piece are important considerations. Developments wouldn't even be able to get their permits anyway with these conditions. Condition of Albany: 80 miles of road are unimproved or failing. Lack of sidewalks/bike lanes, managing that any differently.
- Mark: haven't been tracking this part of the rulemaking as closely, but he thinks that as was just said, a jurisdiction could continue to allow construction of single-family homes like one per lot while

not allowing middle housing to be built if they provide some kind of justification about the incremental impact.

- It would be reversed to say if a jurisdiction is wishing to put forward an IBTER request to that effect to say, “We’ve got adequate capacity to serve continued single-family development, but we really think the middle housing is going to be the tipping point and it’s going to lead to infrastructure failure or what-have-you,” the owners would be on the local government to make that case.
- Kevin: As we move into more intensive housing types, does it make sense to look for other street infrastructure? Ex/unsafe intersection, plan to address that issue, maybe we shouldn’t put heavy development there.
- Jerry: is there a place where development shouldn’t occur (i.e., hillsides, hazards)?
 - There are defining areas where we’re allowing those more intensive housing types and what discretion a local government should have in making that determination. Is an infrastructure constraint a valid basis for that? Making that call. It’s a question for the group.
- Kimberli - Wanted to double check that the IBTER time extension also takes Goal 5 and other constrained areas into account - so for example if a jurisdiction is developing unimproved infrastructure - unimproved roadway segments for example and then run into an archaeological site; this could cause significant delays
- Allan: one of the frameworks we’ve used for single family housing. There should be some parallel with IBTER and single-occupancy environment. Is what is being developed here parallel to single occupancy dwellings?
 - Kevin: current practice would address that issue regardless of single family occupancy
 - Allan: Yes, thanks, Kevin. I think this might be an important framework to consider since that is how we are viewing middle housing in other contexts, comparable to single-occupancy dwellings vs. comparing it to multi-dwelling units. Again, one example might be how we view traffic analyses for these two different types of land uses. The framework of evaluating Middle Housing as comparable to single-occupancy dwelling from an infrastructure perspective fits with the objective of increasing housing choice and housing supply.

Housing Production Strategy

- Engagement – how we are requiring engagement to occur.
 - For the HNA – which is already required, engagement will be conducted to housing consumers so they can understand the needs of the community.
 - HPS Report – housing and public utility providers would be engaged
- Enforcement – Given best ability of communities to implement strategies, it is up to private market to bring private units on the ground. We will approach to analyze good faith effort from communities rather than results.
- Housing Production Strategy Report Structure
 - Broken into different income brackets
 - HPS will need to contextualize and detail needs of each category
 - Tools, actions, and policies to address housing needs
 - Currently developing a list organized into different “buckets”
 - Reduction of financial/development impediments
 - Creation of financial/development incentives

- Local, state, federal resources
 - Other strategies
- Jurisdictions will be able to choose multiple strategies and must identify
 - Timeline for adoption
 - Timeline for implementation
 - Magnitude of impact
 - Identified Housing Need fulfilled (tenure and income)
 - Number of housing units that may be created, if possible
 - Income and demographic needs strategy will serve
 - Time frame over which the strategy is expected to impact needed housing
- Jesse: How are we considering displacement factors and how they will impact low-income people. Has there been conversation about including that in HPS? Development carries a risk of displacement.
 - Ethan: This is important given the redevelopment pressure from HB 2001. Is woven into the process via engagement, reporting, and ultimately the Housing Strategy Report.
- Jerry: Keep in mind that redevelopment will often replace existing housing that is often less expensive. Keep in mind ORS 197.223 when considering reduction of SDCs, as this section outlines what jurisdictions are allowed to do.
- Jes Larson: Not clear about where a construction excise tax falls into one “bucket”. There is a lot of overlap between these buckets.
 - Ethan: Many of these strategies are too unique to prescriptively say that cities should consider all buckets; instead, approach is to provide a menu of options.
- Anyeley: Feedback from TAC – We could have a lot more buckets and we should. With more broken down buckets, there is more opportunity for people to fill that with strategies.
 - Ethan: The needs for each of these communities will be different, including the development community. Pulling from these communities will be important
- Michelle: Will the menu of options include supports that small/medium cities might need to assess whether they are feasible? If a non-Metro jurisdiction wanted to look to inclusionary zoning, there is no model code outside of Portland’s code. Will this be part of the scope of this document?
 - Ethan: There is need for more guidance on what an HPS is, what resources are available, what best practices are, etc. This support should come down the line, but may not be a part of the HPSTAC.

Next Steps

- We’ll be bringing the medium cities model code, the rules and the fiscal housing impact statement to the Lincoln Conservation Development Commission for public hearing at their May meeting and then hopefully, final adoption at their July meeting.
- For the infrastructure extension request, the timeline is shifted a month or two. Their first look at house rules and the associated fiscal impact statements would be at their July meeting for a public hearing, and then because the timeline is so quick for medium cities to submit an application for it in IBTER, we’re hoping to have a special commission meeting sometime in the beginning of August, early part of August to adopt those rules.

- For the housing production strategy, the timeline is there's no hard and fast deadline in the statutory requirements, so we're hoping to pair that with the large and metro cities timeline of adoption which is September, public hearing, and November, final adoption.
- Our next RAC meeting is on May 7th. At that meeting, we'll be focusing in on a further refinement of the large and metro cities; an in-depth look, I'll call it, at the infrastructure-based time extension request, rules, and finish out. On that, we'll finish out the storm water, the storm drainage infrastructure analysis and then we'll continue to bring back thoughts and revisions for the housing production strategy, rules on enforcement, engagement reporting, and the structure.

MIDDLE HOUSING MODEL CODE TECHNICAL ADVISORY COMMITTEE MEETING PACKET #5



TO: Middle Housing Model Code Technical Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: MCTAC Meeting #5 Discussion Worksheet

Middle Housing Model Code Technical Advisory Committee Members,

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

As you review the meeting packet contents prior to our meeting on April 21st, please use this worksheet to take down notes or to formulate your questions for the project team. Due to limited discussion time at our meetings, please submit this as additional written feedback to the project team at the meeting as you see fit.

Thank you,



Ethan Stuckmayer

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

MCTAC Meeting Packet Item #6: Medium Cities Model Code

[#1] Is there anything in particular that you feel DLCD must address in the model code that has not been addressed? What specific changes to the model code do you recommend before it is finalized for LCDC?

[#2] The draft OAR is intended to clearly outline the minimum standards a city may reasonably adopt to comply with HB2001, as discussed throughout the TAC and RAC process. Do you feel these standards provide enough guidance to local governments as they adopt their own code regulating middle housing?

MCTAC 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?”

[#4] Definitions (memo pages 3-5) – There are two options for how the model code might define triplexes and quadplexes. Should the definition require the units be attached within one structure or be defined as two units on a lot in any configuration.

[#5] Applicability (memo page 5-7) – Are there other criteria not listed above that could be used to define where middle housing types must be allowed?

[#6] Development Standards (memo page 9-15) – 2. Minimum Lot Size – Several options for minimum lot size standards have been provided, which of the options would be most appropriate when being applied to triplex and quadplex development?

[#7] Development Standards (memo page 9-15) – 3. Minimum Lot Width – Do you agree that the minimum lot width should be the same for triplexes and quadplexes as it is for a single-family detached structure? Or, do we need to include provisions for lot width at all in the model code?

[#8] Development Standards (memo page 9-15) – 7. Regulating Scale/Bulk – DLCD’s preferred option to regulate scale and bulk is using the Maximum Floor Area Ratio (FAR) standards for

triplexes and quadplexes. Do you agree, or would you prefer to use one of the other options provided in the model code?

[#9] Development Standards (memo page 9-15) – 8. Off-Street Parking – Three options have been provided for triplex and quadplex off-street parking, which of these options do you prefer? Are there options no listed that should be considered?

[#10] Design Standards (memo page 15-18) – Design Standards – DLCD’s initial recommendation is to regulate only four design aspects of triplexes and quadplexes. Do you agree with regulating the design of these elements? Do you recommend more or fewer design standards?

[#11] Design Standards (memo page 15-18) – 3. Garages and Off-Street Parking Areas – Three options have been provided for triplex and quadplex garage design standards, which of these options do you prefer? One additional option is to prohibit jurisdictions from requiring garages for all middle housing types. This option could be paired with garage design standards. Which option do you prefer?



MEMORANDUM

Model Code for Medium Cities (LCDC DRAFT) DLCD Middle Housing Model Code

DATE April 10, 2020
TO Oregon Land Conservation and Development Commission
FROM Matt Hastie, Cathy Corliss, and Kate Rogers, Angelo Planning Group
CC Ethan Stuckmayer and Robert Mansolillo, DLCD
Project Team

Middle Housing Model Code for Medium Cities

User's Guide:

Oregon House Bill 2001 (HB2001) requires that "Medium Cities" (defined as cities with a population of more than 10,000 and less than 25,000 that are not within Metro's jurisdiction) allow a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. The bill allows local governments to regulate siting and design of duplexes, provided that the regulations do not, individually or cumulatively, discourage duplex development through unreasonable costs or delay. Duplexes provide an opportunity to increase housing supply in developed neighborhoods and can blend in well with detached single-family dwellings. Concerns about neighborhood compatibility and other factors should be considered and balanced against the need to address Oregon's housing shortage by removing barriers to development.

Medium Cities may develop their own standards in compliance with the requirements of HB2001 and this document is intended to provide guidance toward that end. However, if cities do not adopt the required code amendments by HB2001's June 30, 2021 deadline, they must directly apply the model code to any applicable proposals. The model code standards are intended to be straightforward and implementable by medium-size cities throughout the state. They are consistent with the requirements and intent of HB 2001 and also are intended to ensure that duplexes are no more difficult to develop than a detached single-family home. The model code will be adopted by reference into Oregon Administrative Rules.

Sections:

- A. Purpose**
- B. Definitions**
- C. Applicability**
- D. Relationship to Other Regulations**
- E. Permitted Uses and Approval Process**
- F. Development Standards**
- G. Design Standards**
- H. Duplex Conversions**
- I. Figures**

A. Purpose

The purpose of this model middle housing code (“code”) is to implement Oregon House Bill 2001 (2019) and ORS 197.758 by providing standards for duplexes developed on lots that allow for the development of detached single-family dwellings.

B. Definitions

The following definitions shall apply for the purposes of this code, notwithstanding other definitions in the local jurisdiction’s development code:

1. “Detached single-family dwelling” means a detached structure on a lot or parcel that is comprised of a single dwelling unit. Detached single-family dwellings may be constructed off-site, e.g., manufactured dwellings or modular homes.
2. “Duplex” means a detached structure on a lot or parcel that is comprised of two dwelling units. See Figures 1 – 4 in Section I, which illustrate examples of possible duplex configurations. In instances where a structure can meet this definition of a duplex and also meets the jurisdiction’s definition of a primary dwelling unit with an attached or internal accessory dwelling unit (ADU), the property owner has the option of electing whether the entire structure is considered a duplex or a primary dwelling unit with an attached or internal ADU.
3. “Zoned for residential use” means a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan map designation.

C. Applicability

1. Except as specified in subsection (2), the standards in this code allow for the development of duplexes, including those created through conversion of existing detached single-family dwellings, on lots or parcels (including lots of record) zoned for residential use that allow for the development of detached single-family dwellings.
2. The standards in this code do not allow for the following, unless otherwise permitted by the jurisdiction:

- Creation of duplexes on lots or parcels on lands that are not zoned for residential use. This includes lands zoned primarily for commercial, industrial, agricultural, public, or mixed uses, even if those zones allow for the development of detached single-family dwellings.
- Creation of more than two dwelling units on a lot.

D. Relationship to Other Regulations

1. Conflicts. In the event of a conflict between this code and the jurisdiction's standards applicable to a proposed duplex, the standards of this code control.
2. Public Works Standards. Clear and objective exceptions to public works standards granted to single-family dwellings shall also be granted to duplexes developed pursuant to this code.
3. Protective Measures. Duplexes developed pursuant to this code shall comply with protective measures (including plans, policies, and regulations) adopted pursuant to statewide land use planning goals (e.g., environmental and natural hazard protections).

E. Permitted Uses and Approval Process

Duplexes shall be permitted outright on lots or parcels zoned for residential use that allow for the development of detached single-family dwellings. Duplexes shall be subject to the same approval process as the local jurisdiction applies to detached single-family dwellings in the same zone, and shall be subject to only clear and objective standards, approval criteria, conditions, and procedures. Alternatively, an applicant may choose to submit an application for a duplex subject to discretionary standards and criteria if such a process is available in the subject jurisdiction.

F. Development Standards

Except as specified below, duplexes developed pursuant to this code shall meet all clear and objective development standards that the jurisdiction applies to detached single-family dwellings in the same zone (including, but not limited to, minimum and maximum lot size, minimum and maximum setbacks, and building height), unless those standards conflict with this code.

Development standards that the jurisdiction applies only to duplexes shall not apply to duplexes developed pursuant to this code.

1. Maximum Density. The jurisdiction's pre-existing density maximums and minimum lot sizes for duplexes do not apply to duplexes permitted pursuant to this code.
2. Setbacks. In no case shall a minimum front setback of greater than 20 feet or a minimum rear setback of greater than 15 feet be required except for those minimum setbacks applicable to garages and carports.
3. Off-Street Parking. No off-street parking is required for a duplex permitted pursuant to this code.

G. Design Standards

New duplexes shall meet all clear and objective design standards (e.g., entry orientation, window coverage, articulation, etc.) that the jurisdiction applies to detached single-family dwellings in the same zone, unless those standards conflict with this code.

Other design standards that the jurisdiction applies only to duplexes shall not apply to duplexes developed pursuant to this code.

H. Duplex Conversions

Conversion of an existing detached single-family dwelling to a duplex is allowed, pursuant to Section C, provided that the conversion does not increase nonconformance with applicable clear and objective standards.

I. Figures

The following figures illustrate examples of possible duplex configurations. Other configurations may also be acceptable, provided the structure meets the definition of duplex, pursuant to Section B.

Figure 1. Stacked Duplex

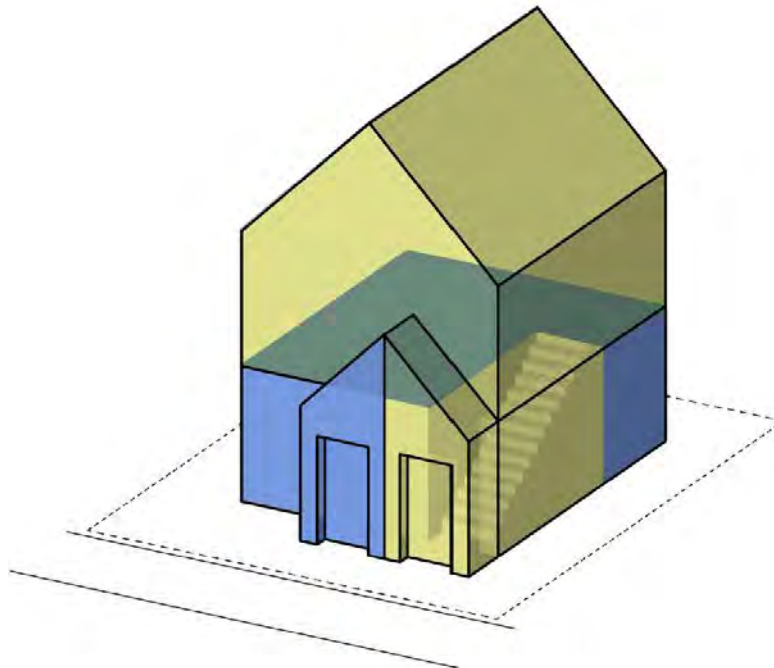


Figure 2. Side-by-Side Duplex

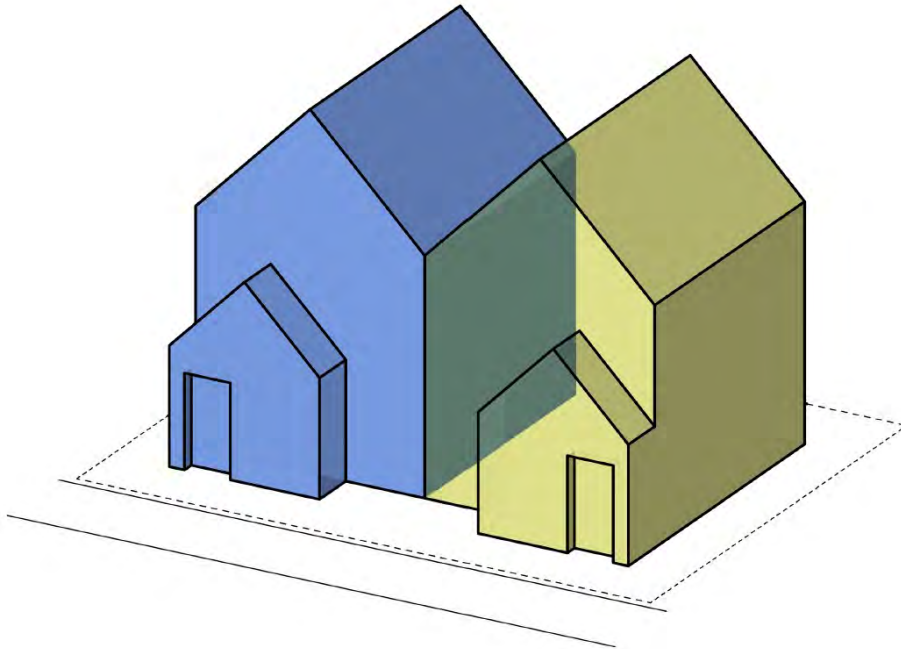


Figure 3. Duplex Attached by Garage Wall

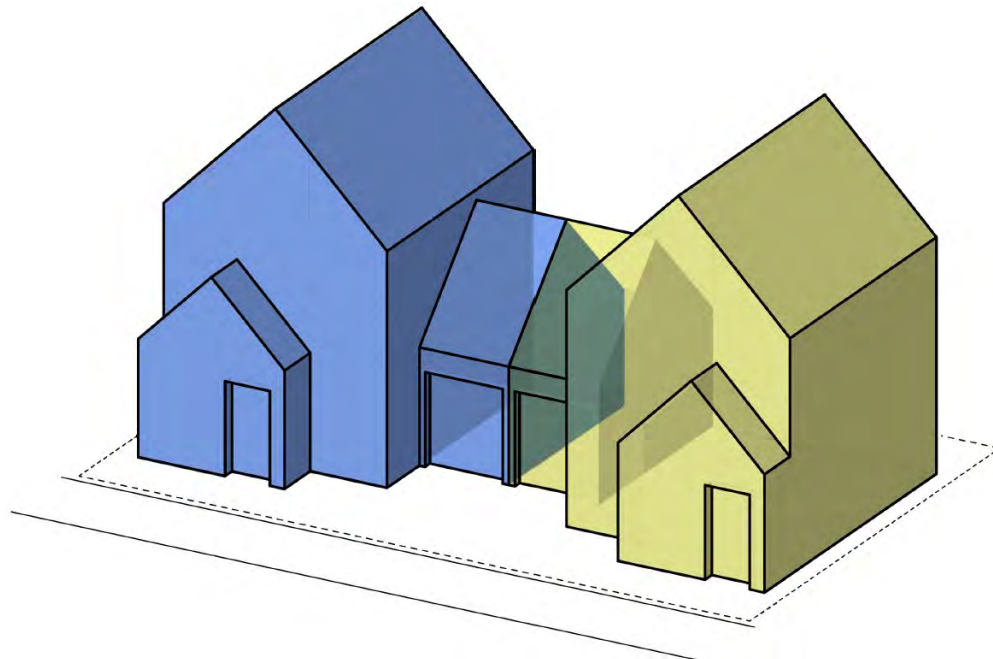
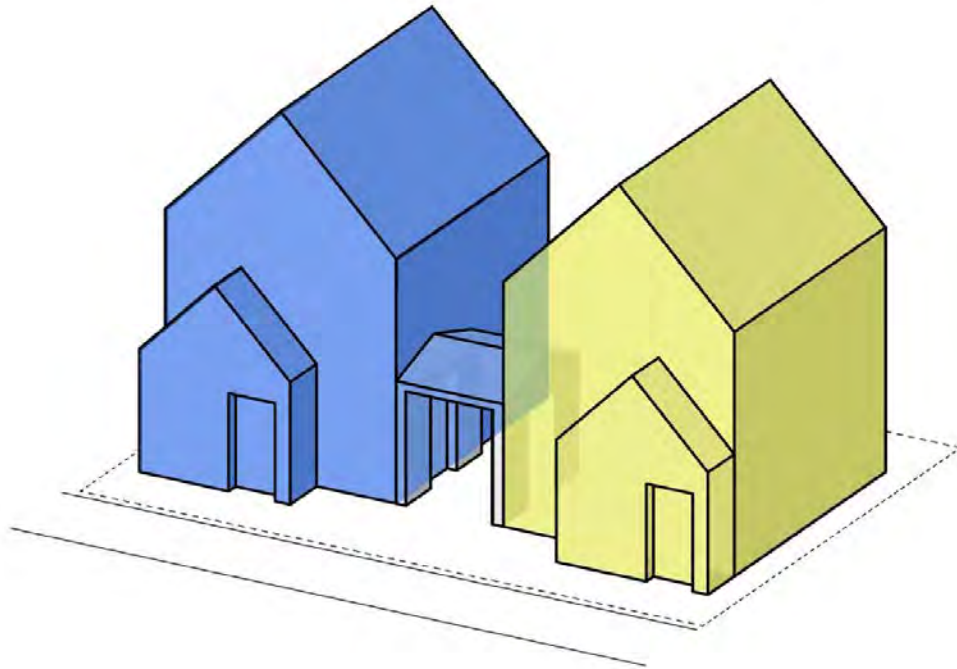


Figure 4. Duplex Attached by Breezeway



MIDDLE HOUSING MODEL CODE TECHNICAL ADVISORY COMMITTEE MEETING PACKET #5



TO: Middle Housing Model Code Technical Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: Revised Draft OAR 660-046 Middle Housing in Medium Cities

Middle Housing Model Code Technical Advisory Committee Members,

Below please review a revised version of the Oregon Administrative Rule Chapter 660 Division 46 – Middle Housing in Medium Cities. This version includes edits and revisions based on comments provided at the MCTAC4 meeting and the RAC5 meeting as well as legal fixes based on comments from the Oregon Department of Justice.

Division 46 Middle Housing in Medium Cities

660-046-0000 Purpose

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

660-046-0010 Applicability

1. A local government that is a medium city must comply with the provisions of this division.
2. Notwithstanding subsection (1), a local government need not comply with this division for:
 - a. Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural, or public uses; or
 - b. Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.
3. Local governments may regulate middle housing in areas zoned for residential use that allow for the development of detached single-family dwellings to comply with the following protective measures (including plans, policies, and regulations) adopted and acknowledged pursuant to statewide land use planning goals as described below.
 - a. Goal 5: Natural Resources, Scenic, and Historic Areas - Local governments may regulate middle housing to comply with protective measures (including plans, policies, and regulations) adopted pursuant to Statewide Land Use Planning Goal 5.
 - A. Goal 5 Riparian Areas, Wetlands, and Wildlife Habitat - In order to protect water quality, aquatic habitat, and the habitat of threatened, endangered and sensitive species, local governments may apply protective measures to duplexes that are applicable to detached single-family dwellings in the same zone.
 - B. Goal 5: Historic Resources – Local governments may apply protective measures related to the siting and design of middle housing as it relates to the integrity of a historic resource or district. Protective measures shall be the minimum necessary to prevent the

loss or destruction of a historic resource. Local governments may not apply the following types of regulations specific to middle housing:

- i. Use, density, and occupancy restrictions that prohibit the development of middle housing on historic properties or districts that otherwise permit the development of detached single-family dwellings.
 - ii. Design standards that prohibit the development of middle housing on historic properties or districts that otherwise permit the development of detached single-family dwellings.
 - a. Goal 7: Natural Hazards – Local governments may apply protective measures, including but not limited to restrictions on use, density, and occupancy related to middle housing in order to reduce risk to life or property in the following areas:
 - A. 1% annual-chance floodplain and floodway areas (100-Year floodplain) as identified on the most recent FEMA National Flood Insurance Program Map; and
 - B. Other hazard areas identified in a jurisdiction’s adopted comprehensive plan or development code; provided the development of middle housing presents a greater risk to life or property than the development of detached single-family dwellings. Greater risk includes but is not limited to actions or effects such as:
 - i. Increasing the number of people exposed to a hazard;
 - ii. Increasing risk of damage to property, built or natural infrastructure; or
 - iii. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.
 - b. Goal 15: Willamette Greenway – In order to ensure that middle housing is developed in a manner consistent with the objectives of the Willamette Greenway Goal, local governments may apply protective measures to duplexes that are applicable to single-family detached dwellings in the same zone.
 - c. Goal 16: Estuarine Resources - Duplexes and middle housing types other than duplexes may be prohibited in areas subject to Goal 16: Estuarine Resources, pursuant to OAR 660-015-0010(1) and OAR 660-017.
 - d. Goal 17: Coastal Shorelands - Local governments may apply protective measures, including restrictions on use, density, and occupancy related to middle housing in order to reduce risk to life and/or property in areas identified as Coastal Shorelands pursuant to OAR 660-015-0010(2).
 - e. Goal 18: Beaches and Dunes - Local governments may apply protective measures, including but not limited to restrictions on use, density, and occupancy related to middle housing in order to reduce risk to life or property in areas identified as Beaches and Dunes pursuant to OAR 660-015-0010(3); provided the development of middle housing presents a greater risk to life or property than development of detached single-family dwellings. Greater risk includes but is not limited to actions or effects such as:
 - A. Increasing the number of people exposed to a hazard;
 - B. Increasing risk of damage to property, built or natural infrastructure; or
 - C. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.
4. This division does not prohibit local governments from allowing:
 - a. Single-family dwellings in areas zoned to allow for single-family dwellings; or
 - b. Middle housing in areas not required under this rule.

660-046-0020 Definitions

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

1. “Detached single-family dwelling” means a detached structure on a lot or parcel that is comprised of a single dwelling unit, either site built or a manufactured dwelling.
2. “Duplex” means two attached dwelling units on one lot or parcel. A medium city may define a duplex to include two detached dwelling units on one lot or parcel.
3. “Lot or parcel” means any legally created unit of land.

4. "Medium City" means each city with a certified Portland State University Population Research Center estimated population more than 10,000 and less than 25,000 and not within a metropolitan service district.
5. "Middle housing" means a duplex as defined in this section.
6. "Zoned for residential use" means a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan map designation.

660-046-0030 Implementation of Middle Housing Ordinances

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

660-046-0040 Compliance

1. A local government that meets the definition of a medium city as defined in OAR 660-046-0020 shall adopt land use regulations or amend its comprehensive plan that comply with ORS 197.758 and the provisions of this division no later than June 30, 2021.
2. A local government may request an extension of the time allowed to adopt land use regulations or amend its comprehensive plan to implement ORS 197.758 and the provisions of this division pursuant to Oregon Laws 2019, chapter 639, section 4.
3. A medium city that has not acted by the date provided under subsection (1) shall directly apply the applicable model code in its entirety contained in OAR 660-046-0103(4) to all proposed middle housing development applications until such time as the medium city has adopted provisions that comply with ORS 197.758 and the provisions of this division.
4. If a medium city has acted by the date provided under subsection (1) and the city's land use regulations or comprehensive plan are subsequently remanded by the Land Use Board of Appeals or an appellate court solely on procedural grounds, the medium city may continue to apply its own land use regulations and comprehensive plan until the city's act is acknowledged.
5. If a medium city has acted by the date provided under subsection (1) and the city's land use regulations or comprehensive plan are subsequently remanded by the Land Use Board of Appeals or an appellate court on any substantive grounds, the city shall directly apply the applicable model code in its entirety contained in OAR 660-046-0103(4) until such time as the medium city has adopted provisions that comply with ORS 197.758 and the provisions of this division.
6. In the event that a medium city directly applies the model code in accordance with subsection (3), the model code completely replaces and pre-empts a local government's code provisions regulating the development of duplexes.

660-046-0050 Eligible Local Governments

If a city was not previously a medium city and a certified Portland State University Population Research Center population estimate qualifies a city as a medium city, the city must comply with this division within one year of its qualification as a medium city.

660-046-0100 Middle Housing in Medium Cities

660-046-0101 Purpose

OAR 660-046-0102 through OAR 660-046-0107 are intended to measure compliance with ORS 197.758 and Goal 10 Housing for medium cities.

660-046-0102 Applicability

1. A medium city must allow for the development of a duplex, including those created through conversion of existing detached single-family dwelling, on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.
2. The standards as outlined in OAR 660-046-0100 through OAR 660-046-0107 do not require the following, unless otherwise allowed by the medium city:
 - a. Creation of duplexes on lots or parcels that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural, public, or mixed uses, even if those zones allow for the development of detached single-family dwellings; or
 - b. Creation of more than two dwellings units on a lot or parcel, including any accessory dwelling units.

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

1. Duplexes shall comply with protective measures, including plans, policies and regulations, as outlined in OAR 660-046-0010(3).
2. Local governments may regulate siting and design of duplexes, provided that the regulations do not, individually or cumulatively, discourage the development of duplexes through unreasonable costs or delay.
3. Siting and design standards that create unreasonable cost and delay include any clear and objective standards applied to duplex development that are more restrictive than those applicable to single family detached structures in the same zone unless otherwise permitted in this division.
4. Reasonable standards include:
 - a. Permitted uses and approval process outlined in OAR 660-046-0104;
 - b. Development standards outlined in OAR 660-046-0105;
 - c. Design standards outlined in OAR 660-046-0106;
 - d. Duplex Conversions outlined in OAR 660-046-0107;
 - e. Any siting and design standards contained in the model code referenced in subsection (5).
5. For the purposes of assisting local governments in adopting reasonable siting and design standards for duplexes, the Land Conservation and Development Commission adopts the following model middle housing code for medium cities. The model code adopted by reference in this subsection will be applied to local governments who have not acted to comply with the provisions of ORS 197.758 and the provisions of this division and completely replaces and pre-empts a local government's code provisions regulating the development of duplexes: <<hyperlink to medium cities model code>>

660-046-0104 Permitted Uses and Approval Process

Local governments must permit duplexes on each lot or parcel zoned for residential use that allows for the development of detached single-family structures. Local governments must apply the same approval process to duplexes as detached single-family dwellings in the same zone. Local governments may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of duplexes pursuant to OAR 660-008-0015 and ORS 197.307.

660-046-0105 Development Standards

The following standards apply to all duplexes:

1. Minimum Lot or Parcel Size: A local government may not require a minimum lot or parcel size that is greater than the minimum lot or parcel size required for a detached single-family dwelling in the same zone.
2. Density: If a local government applies density maximums in a zone, it may not apply those maximums to the development of duplexes.
3. Setbacks: A local government may not require setbacks to be greater than those applicable to detached single-family dwellings in the same zone.
4. Height: A local government may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone.
5. Parking:
 - a. A local government may not require more than a total of two (2) off-street parking spaces.
 - b. Nothing in this section precludes a local government from allowing on-street parking credits to satisfy off-street parking requirements.
6. Lot Coverage and Floor Area Ratio: Local governments are not required to apply lot coverage or floor area ratio standards to new duplexes. However, if the local government chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for a duplex that is less than established for single-family detached dwelling in the same zone.
7. If a local government or other utility service provider grants clear and objective exceptions to public works standards to single-family detached dwelling development, those same exceptions must also be granted to duplexes.

660-046-0106 Design Standards

1. Local governments are not required to apply design standards to new duplexes. However, if the local government chooses to apply design standards to new duplexes, it may only apply the same clear and objective design standards that the local government applies to detached single-family structures in the same zone.
2. A local government may not apply design standards to duplexes created through internal conversion of a single-family detached structure.

660-046-0107 Duplex Conversions

Conversion of an existing detached single-family structure to a duplex is allowed, pursuant to OAR 660-046-0102(2), provided that the conversion does not increase nonconformance with applicable clear and objective standards.

DATE: April 14, 2020
TO: Ethan Stuckmayer, Department of Land Conservation and Development
FROM: Tyler Bump and Becky Hewitt, ECONorthwest
SUBJECT: Fiscal and Housing Impact Statements for Middle Housing Model Code for Medium Cities
(DRAFT)

Introduction

Per the Oregon Administrative Procedures Act (APA) and specifically ORS Chapter 183.335(2)(b)(E), the Department of Land Conservation and Development (DLCD), in preparation to adopt Oregon Administrative Rules implementing provisions of House Bill 2001 (2019), must provide a Statement of Fiscal Impact (FIS). The purpose of the FIS is to give notice to anyone who the rule may have a fiscal impact on. The FIS should therefore describe the purpose of the rule, attempt to identify people or entities the rule will affect, and describe, as best as possible, what that effect will be.

This FIS must identify “state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule” and must estimate the economic impact on those entities. ORS Chapter 183.335(2)(b)(E) also requires that, in determining economic impact, the agency shall “project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.”

DLCD is not required to conduct original research in creating a FIS. DLCD is required to use available information to project any significant effect of the proposed rule, including a quantitative estimate of how the proposed rule affects these entities or an explanation of why DLCD cannot make the estimate. DLCD is required to identify any persons this proposed rule could affect economically including:

- Small and large businesses, as defined in ORS 183.310(10)
- State agencies (DLCD and any other State agency),
- Local governments, and
- The public.

Additionally, ORS Chapter 183.335(2)(b)(E) requires that rules adopted by the Land Conservation and Development Commission also “estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.” This Housing Impact Statement (HIS) is described in ORS 183.534.

This memorandum describes the fiscal and housing impacts of draft of the Medium Cites Middle Housing Draft Administrative Rules (proposed rules).

Fiscal Impact Statement

The Medium Cities Middle Housing Draft Administrative rules may result in fiscal and economic impacts including:

- Compliance costs for local governments to amend local development regulations for consistency with the draft rules and for DLCD to review those amendments.
- Impacts to the public, development-related businesses, and local governments in the form of increases to property values, property taxes, and/or business and investment opportunities as a result of increased development potential.
- Impacts to local governments resulting from differences in system development charge revenue, property tax revenue, and/or cost of providing services due to a shift in the type and location of housing developed as a result of changes to local development regulations.

The anticipated fiscal and economic impacts in each of these categories are discussed in more detail below. There are no compliance costs for businesses, as the proposed rule does not apply to businesses directly, and the relevant businesses already must comply with local regulations for development.

Code Amendments for Compliance

Local Government Costs

Medium Cities (population 10,000 to 25,000) are required to comply with the draft administrative rules. For nearly all, if not all, of these jurisdictions, this will require amending their development code. DLCD is developing model code language simultaneously with rule-making, so jurisdictions will have the option to simply adopt the model code language, or to develop their own conforming code amendments. Note that Measure 56 notice will not be required of jurisdictions in order to adopt conforming amendments, since the proposed rule does not limit development.

The cost of drafting and adopting code amendments could range from \$25,000 for simply adopting the model code to \$50,000 for drafting separate regulations, providing robust opportunities for public input, and the adoption process.

State Agency Costs

DLCD staff will be responsible for review of post-acknowledgement plan amendments resulting from changes to the local level. This represents a modest increase in staff effort relative to the norm.

Additionally, there is the potential for DLCD to incur Department of Justice legal fees in situations where the DLCD files an appeal of a local government's non-compliant development code to the Land Use Board of Appeals (LUBA) or is brought to intervene in a LUBA case between two other parties regarding an appeal. DLCD also maintains authority to enact an

enforcement order, which would incur legal fees and demand a modest increase in staff effort in time to review and compile legal records relative to the norm.

Increased Development Potential

The rules require that Medium Cities allow duplexes on all lots or parcels in areas zoned for residential use where single family homes are allowed. This may increase the land value in areas where duplex development is financially feasible and where it offers financial returns that exceed those of single family development. This could affect resale value of existing homes and potentially also property taxes. It also provides property owners with a greater range of options for how to use their property. In locations where duplex development is not financially feasible or does not offer financial returns that exceed those for single family homes, there will be no change to development potential or resale values.

There is no land use precedent for comparable rules in communities of comparable scale that would allow us to accurately measure the impact of the proposed rules.

Impacts to the Public: Resale Value of Existing Homes

For existing homes, those that are lower cost and/or in poor condition may be more likely to be redeveloped. Larger homes that are in need of major remodels may offer potential for conversion to a duplex. These types of homes are most likely to see an increase in resale value as a result of the proposed rules, if there is sufficient demand for duplex development or conversion. Desirable, well-maintained single family homes are unlikely to see a noticeable change in resale value since they would be unlikely targets for a developer or investor looking to create a duplex.

Impacts to the Public: Increased Options for Use of Property

The proposed rules also allow existing and future property owners a wider range of choices for how to use their property, including the potential to create a second unit on the property that is larger than allowed under Accessory Dwelling Unit (ADU) regulations. This can provide a source of rental income if both units are owned by one household. The financial impact will be limited to those who choose to take advantage of the development potential and will be only the incremental difference in rent between what would have been allowed under ADU rules and what will be allowed for duplexes under the proposed rules. This is likely to be limited (e.g. a 25% increase in rent if the second unit is 25% larger than would have been allowed under ADU rules).

Impacts to the Public: Increased Property Taxes

Due to constitutional limits imposed by Measure 50, a property's maximum assessed value (MAV) can increase by no more than 3% per year except under certain circumstances. These circumstances include:

- New construction

-
- Major improvement projects (e.g. additions, remodels, or rehabilitation)¹
 - Land division
 - Rezoning (where the property is used consistently with the new zoning)²

In these cases, the Assessor determines how much Real Market Value (RMV) was added by the change(s) to the property and uses the changed property ratio (CPR) for that property type to determine the additional taxable value.

The proposed rules will require Medium Cities to make changes to their development codes that will constitute rezoning under OAR 150-308-0200. However, in order to trigger the exception, property must be rezoned and used consistently with the rezoning. “Property is ‘used consistently with the rezoning’ when it’s put to a newly allowed use. This doesn’t include situations where the use of the property was an allowed use both before and after the rezoning.”³ In this case, the newly allowed use is a duplex. Improvements to existing single family homes that do not create a duplex (including adding an ADU⁴) may trigger an exception that increases the MAV, but only to the same degree that they would have without the change to zoning regulations. Therefore, the only situations in which the proposed rules will increase property taxes are for properties that are actually developed as, or converted to, duplexes.

For properties that are developed as, or converted to, duplexes, the increase in property value will depend on the RMV after the improvement or development and the CPR in the county where the property is located.

Impacts to Small and Large Businesses: Increased Opportunities for Small-Scale Development

In locations where duplex development enabled by the proposed rules is financially feasible, this may create additional opportunities for small development companies to engage in development activity at a scale that is appropriate for a small business. Greenfield development tends to be more concentrated among larger development companies that are better capitalized and able to obtain more financing. However, even larger development companies rarely have more than 50 employees, so the impacts (positive and any slight negative impact to demand for larger-scale greenfield construction) are likely to be concentrated among businesses with fewer

¹ Valued at more than \$10,000 in one year or \$25,000 over 5 years.

² Per OAR 150-308-0200, this includes a change in:

“(i) The number of dwelling units, other than accessory dwelling units, allowed per acre, or other legal limitation on the number of dwelling units, other than accessory dwelling units, in a given area;

“(ii) The allowed floor area ratio; or

“(iii) The allowed site coverage ratio.”

³ Oregon Department of Revenue, “Maximum Assessed Value Manual,” Rev. 05-18, Page 7-4.

https://www.oregon.gov/DOR/forms/FormsPubs/maximum-assessed-value-manual_303-438.pdf

⁴ Accessory dwelling units are specifically addressed in OAR 150-308-0200 and excluded from the definition of rezoning, along with other changes to accessory uses, for purposes of changing the MAV.

than 50 employees. The design, engineering, and other businesses that support development are likely to be the same regardless of housing type, or see very minor impacts to their business.

Shifts in Type and Location of Housing Development

The increase in capacity in areas zoned for single family housing resulting from the proposed rules would impact the location and type of housing development as a result of duplex development in existing neighborhoods. Although this would result in an increase in zoned capacity, it may or may not change the pace of development. From a planning perspective, it will not change the overall population forecast⁵ or total number of housing units jurisdictions will be planning for as part of a Housing Needs Analysis. As a result, the impact is primarily a shift of a small percentage of the community's housing development from single family detached housing and multifamily housing to duplex development. In some communities, there could be an increase in the pace of development if the lack of available land in desirable places with access to services has been a barrier to housing production. The increase in capacity in certain residential zones could also mean a shift of a small percentage of housing growth from greenfield development areas to infill development and/or slightly more efficient greenfield development. The legislation states that a local government's density expectations from measures adopted to implement the legislation may not project an increase in residential capacity of more than three percent over the 20-year planning horizon without quantifiable validation. While this increase in capacity will vary from one community to another, it suggests a modest shift.

It is difficult to say to what degree duplex development will substitute for single family development vs. multifamily development. This depends on a number of factors, including unit size and tenure. In many medium cities, financing larger multifamily buildings is very challenging, meaning that duplexes may be substituting for multifamily housing that was needed but not actually being delivered by the market.

Impacts to Local Governments: System Development Charge Revenue

Many cities have different system development charges (SDCs) for single family versus multifamily development, particularly for parks and transportation. Duplexes are handled differently in different jurisdictions—some treat them as single family for purposes of calculating SDCs, while others consider them multifamily. Few have specific fees for duplexes. The nature and extent of a change in SDC revenue would depend on several factors, including:

- The extent to which duplex development is substituting for single family development vs. multifamily development
- Whether duplex development increases the overall pace of development

⁵ This is true in the near-term, although population forecasting is influenced by historical rates of growth and also by capacity for future growth. If the increased capacity and opportunities for duplex development led to a higher rate of growth than in the past, this affect future population forecasts.

-
- Whether duplex development is subject to multifamily SDC rates or single family SDC rates
 - The difference in SDCs between multifamily and single family rates

Impacts to Local Governments: Property Tax Revenue

As noted above, property taxes will only be affected by the proposed rules to the extent that new duplex development or conversion occurs. This would produce a modest increase in property tax revenue from those properties relative to remaining as single family housing. However, since this duplex development is likely substituting (at least in part) for single family and/or multifamily development that would otherwise have occurred, and may have been more likely to occur on vacant land rather than infill, that increase in property value may be counterbalanced by a reduction in new property value from new development on vacant land.

Impacts to Local Governments: Cost to Provide Services

To the extent that the proposed rules increase infill development rather than greenfield development and lead to higher density new development as a result of duplex development, this could modestly reduce the cost to local governments of providing urban services, since more compact development is typically more efficient to serve.

Housing Impact Statement

There are some situations in which the proposed rule could result in a modest impact to the cost of land for single-family residential development, as described below. The proposed rule is not anticipated to affect the cost of materials, labor, administration, or other factors, since any increase in housing development overall is likely to be minor. The proposed rule will not reduce the supply of land for housing, and will either have no effect or a small positive effect on the overall supply of housing.

The conditions in which the proposed rule could increase the cost of land for residential development are as follows:

- Duplex development is financially feasible; and
- The returns from developing a duplex exceed those of developing a single family home on that lot.

If these conditions are met, the developer of the duplex will likely be able to pay more for the lot than the developer of the single family home. This may increase the cost of land for the single family home.

The reference case for this analysis is a 1,200 square foot single family home on a 6,000 square foot lot. Because 1,200 square feet is small for a new single family home in the current market and it is possible that a duplex could have twice that much square footage in some jurisdictions (depending on restrictions on lot coverage and floor area ratio), it is relatively likely that a developer would be able to pay more for the land to build a duplex than to build a 1,200 square

foot single family home. However, it is worth noting that most new homes are as much as twice that size, and builders of these larger single family homes are also likely to be able to pay more for the land than someone trying to build a 1,200 square foot home. A large single family home and a duplex may have a more comparable ability to pay for land. Because the specific increases to land cost will depend on local market conditions, it is not possible to estimate the cost increase based on available data.

DRAFT



MEMORANDUM

Large & Metro Cities Model Code Part 1 (REVISED DRAFT) & Part 2 (INITIAL DRAFT) DLCD Middle Housing Model Code

DATE April 13, 2020
TO MHMC Model Code Technical Advisory Committee (MCTAC)
FROM Matt Hastie, Cathy Corliss, and Kate Rogers, Angelo Planning Group
CC Ethan Stuckmayer and Robert Mansolillo, DLCD
Project Team

Commentary:

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

- **Chapter 1. Combined Standards for All Middle Housing.** This chapter includes the Purpose, Applicability, Definitions, and Relationship to Other Regulations sections, which are proposed to be shared by all middle housing types. The draft code provisions have been revised following review of the initial draft of LMCMC Part 1 at Model Code Technical Advisory Committee (MCTAC) meeting 4 and Rulemaking Advisory Committee (RAC) meeting 5.
- **Chapter 2. Duplexes, Triplexes, and Quadplexes.** This memo presents the initial draft of LMCMC Part 2, with proposed standards for duplexes, triplexes, and quadplexes. These draft code provisions will be further refined based on direction from the MCTAC and RAC.

The remaining middle housing types (townhouses and cottage clusters) will be included in subsequent drafts of the LMCMC presented to the MCTAC.

The following tables include provisions organized into two columns (plus commentary for the MCTAC):

1. **Model Code** – The standards that will apply directly to proposals for middle housing development if jurisdictions do not adopt the required code amendments. These standards are consistent with the requirements and intent

of HB2001 and are intended to be straightforward and implementable by Large Cities (as defined in the house bill) throughout the state.

2. **Minimum Compliance** – The minimum standards that development codes must meet in order to comply with the text and intent of HB2001. These are the standards against which DLCDC will compare amended development codes to ensure they comply with state law.

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

Chapter 1. Combined Standards for All Middle Housing

Sections:

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

Standard	Model Code	Minimum Compliance	Commentary
A. Purpose	The purpose of this model middle housing code (“code”) is to implement Oregon House Bill 2001 (2019) and ORS 197.758 by providing standards for middle housing developed in areas zoned for residential use that allow for the development of detached single-family dwellings.	Local governments are not required to include a purpose statement specific to provisions needed to implement and comply with HB2001.	<i>Consistent with the Medium Cities Model Code, the proposed purpose statement simply includes the stated intent of HB2001, and refers to the bill and state statute.</i>
B. Definitions	The following definitions shall apply for the purposes of this code, notwithstanding other definitions in the local jurisdiction’s development code:	--	--
1. “Common wall”	“Common wall” means a wall or set of walls in a single structure shared by two or more dwelling units. The common wall must be shared for at least 25 percent of the length of the side of the building of the dwelling units. The common wall may be any wall of the building, including the walls of attached garages.	No requirement, as long as definitions ensure consistent application of middle housing standards.	<i>Because HB2001’s definition of “townhouse” uses the term “common wall,” it is defined here. The proposed definition is consistent with those used by the Cities of Bend and Portland (and possibly others). If needed, additional language can be added to refer to Oregon Building code requirements for walls between housing units on separate lots or within separately owned components of the same structure.</i>
2. “Constrained lands”	“Constrained lands” means lands protected or designated pursuant to the following statewide planning goals: <ul style="list-style-type: none"> • Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces; • Goal 7 Areas Subject to Natural Hazards; • Goal 15 Willamette River Greenway; • Goal 16 Estuarine Resources; • Goal 17 Coastal Shorelands; • Goal 18 Beaches and Dunes. 	No requirements for this definition. Jurisdictions may allow middle housing on constrained lands to the extent they determine to be appropriate and consistent with statewide goal protection requirements.	<i>This definition is proposed to establish one type of area where middle housing (besides duplexes) is <u>not</u> permitted by the model code. This may be subject to substantial revision. Additional work on the definition and provisions related to “constrained lands” is still needed to more clearly address the circumstances under which local code provisions related to these goals can be used to limit middle housing in such areas. See the Applicability section for additional commentary.</i>
3. “Cottage cluster”	“Cottage cluster” means a grouping of no fewer than four detached dwelling units per acre, each with a footprint of less than 900 square feet, located on a single lot or parcel that includes a common courtyard.	<i>Same as model code, with the exception that the individual units could be located on separate lots. (See additional information in commentary.)</i>	<i>HB2001 provides the definition of “cottage cluster,” but the draft model code narrows the definition to mean detached units <u>on a single lot</u>. Some jurisdictions provide for cottage clusters on individual lots; however, this would be excessively complicated for the model code, as it requires land division, cross-access agreements, and other provisions that make a clear</i>

Standard	Model Code	Minimum Compliance	Commentary
			<p><i>and objective review path that could work in any jurisdiction very challenging.</i></p> <p><i>However, for minimum compliance with HB2001, jurisdictions may provide greater flexibility as long as the minimum standards are met.</i></p>
<p>4. “Detached single-family dwelling”</p>	<p>“Detached single-family dwelling” means a detached structure on a lot or parcel that is comprised of a single dwelling unit. Detached single-family dwellings may be constructed off-site, e.g., manufactured dwellings or modular homes.</p>	<p>No requirement, as long as definitions ensure consistent application of middle housing standards.</p>	<p>Update since MCTAC 4: <i>The previous definition referred to a “detached single-family dwelling or structure.” All references to single-family <u>structures</u> have been changed to <u>dwellings</u> for the sake of clarity, consistency, and simplicity.</i></p>
<p>5. “Duplex”</p>	<p>“Duplex” means a detached structure on a lot or parcel that is comprised of two dwelling units. In instances where a structure can meet this definition of a duplex and also meets the jurisdiction’s definition of a primary dwelling unit with an attached or internal accessory dwelling unit (ADU), the property owner has the option of electing whether the entire structure is considered a duplex or a primary dwelling unit with an attached or internal ADU.</p>	<p>The definition may be the same as or similar to the model code or may define a duplex as two detached units on one lot. The definition must distinguish a duplex from a combination of a single-family detached unit and an ADU for the purpose of specifying off-street parking requirements.</p>	<p><i>The recommended model code and minimum compliance provisions for the definition of “duplex” are the same as for the Medium Cities Model Code.</i></p>
<p>6. “Floor area ratio (FAR)”</p>	<p>“Floor area ratio” means the amount of gross floor area of a building or structure in relation to the amount of site area, expressed in square feet. For example, a floor area ratio of 2 to 1 means two square feet of floor area for every one square foot of site area. Public utility easements may be excluded from the site area when calculating the floor area ratio for a site.</p>	<p><i>Same as model code if the jurisdiction applies FAR standards to middle housing.</i></p>	<p>Update since MCTAC 4: <i>This definition was added because draft provisions for triplexes and quadplexes include maximum floor area ratio standards (see Chapter 2, Section B.7).</i></p>
<p>7. “Infrastructure-deficient areas”</p>	<p>“Infrastructure-deficient areas” means areas where the local government has identified water, sewer, storm drainage, or transportation services that are either significantly deficient or are expected to be significantly deficient before December 31, 2023, but for which the local government has demonstrated that it is not possible to develop a plan and secure necessary financing and/or needed jurisdictional consent for the necessary improvements as contemplated for the infrastructure-based time extension request (IBTER) process. In the case of transportation system constraints, degraded mobility standards (level of service, etc.) do not qualify an area as “infrastructure-deficient.”</p>	<p><i>No requirement for this definition. Pursuant to Section 4 of HB 2001, DLCD will define Infrastructure-deficient areas for the purposes of a city seeking an extension of middle housing provision in infrastructure-deficient areas.</i></p>	<p>Update since MCTAC 4: <i>This definition is proposed to establish another type of area where middle housing (besides duplexes) is <u>not</u> permitted by the model code.</i></p> <p><i>HB2001 allows local governments to apply for a time extension in adopting middle housing regulations for specific areas that are deficient in water, sewer, storm drainage or transportation services, through what’s known as the infrastructure-based time extension request (IBTER) process. The proposed definition of “infrastructure-deficient areas” in the model code refers to areas with <u>long-term deficiencies</u>, which the jurisdiction does not intend to improve. Accordingly, these areas are not eligible for IBTER requests. The burden of proof would fall to the local jurisdiction to demonstrate that an IBTER is not feasible for these areas.</i></p> <p><i>The proposed Applicability statement would exempt these infrastructure-deficient areas from the requirement to allow middle housing (other than duplexes), as stated in Section C.</i></p>

Standard	Model Code	Minimum Compliance	Commentary
			<i>Additional work on the definition of infrastructure-deficient areas and jurisdictions' abilities to limit middle housing in these areas may still be needed, based on the work of the Infrastructure-Based Time Extension Request Technical Advisory Committee (IBTERTAC).</i>
8. "Lot coverage"	<p>"Lot coverage" means the amount of area covered by building(s) or impervious surfaces on a lot expressed as a percentage of the total lot area.</p> <p>For jurisdictions that regulate minimum landscape area rather than lot coverage, "lot coverage" means the area of a lot which is not required landscape area expressed as a percentage of the total lot area.</p>	<i>Same as model code.</i>	<p>Update since MCTAC 4: <i>This definition was added because the draft provisions for triplexes and quadplexes include maximum lot coverage standards (see Chapter 2, Section B.7).</i></p> <p><i>Lot coverage could be challenging to implement in the model code because it is not defined consistently by local jurisdictions. Some jurisdictions only count building/structure coverage, while others also include impervious surfaces (e.g., driveways). Additionally, some jurisdictions regulate required landscape area in lieu of lot coverage. We've attempted to account for the latter issue, but if lot coverage standards are carried forward in the draft model code, the definition may still need to be refined.</i></p>
9. "Middle housing"	<p>"Middle housing" means duplexes, triplexes, quadplexes, cottage clusters, and townhouses.</p>	<i>Same as model code.</i>	<i>HB2001 provides the definition of "middle housing."</i>
10. "Quadplex"	<p>OPTION 1: "Quadplex" means a detached structure on a lot or parcel that is comprised of four dwelling units. A quadplex is also commonly called a "fourplex."</p> <p>OPTION 2: "Quadplex" means four dwelling units on a lot or parcel in any configuration.</p>	<p>Jurisdictions must define "quadplex" as four dwelling units on a lot. Jurisdictions must allow quadplexes to be provided in an attached configuration but may allow detached units as well. Jurisdictions may also choose to require a more specific configuration as long as the more specific definition does not result in "unreasonable cost or delay."</p>	<p>Update since MCTAC 4: <i>A second option was added, which would allow quadplex units to be either attached or detached. The proposed definition of "quadplex" in Option 1 is consistent with the way "duplex" is defined in the draft model code. The second option would allow additional flexibility.</i></p> <p>Note: <i>Allowing detached units in the model code would likely have trickle-down effects, particularly for the development and design standards. These issues have not been fully explored for this draft, but will be addressed in a later draft if Option 2 is the preferred definition.</i></p>
11. "Townhouse"	<p>"Townhouse" means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit. A townhouse is also commonly called a "rowhouse," "attached house," or "common-wall house."</p>	<p>Jurisdictions must have a definition of "townhouse" (or one of the alternative terms, such as rowhouse), that is the same as or similar to the model code definition. At minimum, this housing type must be defined as attached dwelling units on individual lots.</p>	<i>HB2001 provides the definition of "townhouse."</i>
12. "Triplex"	<p>OPTION 1: "Triplex" means a detached structure on a lot or parcel that is comprised of three dwelling units.</p> <p>OPTION 2: "Triplex" means three dwelling units on a lot or parcel in any configuration.</p>	<p>Jurisdictions must define "triplex" as three dwelling units on a lot. Jurisdictions must allow triplexes to be provided in an attached configuration but may allow detached units as well.</p>	Update since MCTAC 4: <i>A second option was added, which would allow triplex units to be either attached or detached. See commentary for "quadplex" above.</i>
13. "Zoned for residential use"	<p>"Zoned for residential use" means a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan map designation.</p>	<i>Same as model code.</i>	<i>This definition clarifies that the middle housing requirement only applies in residential zones. This is further clarified in the Applicability section.</i>
C. Applicability	--	--	--

Standard	Model Code	Minimum Compliance	Commentary
<p>1. <u>Applicability of Code Sections.</u></p>	<p>a. Code sections applicable to all middle housing types are: Chapter 1, Sections A. Purpose, B. Definitions, C. Applicability, [potentially others].</p> <p>b. Code standards applicable to specific housing types are listed below:</p> <ul style="list-style-type: none"> • Duplexes: Chapter 2. • Triplexes: Chapter 2. • Quadplexes: Chapter 2. • Cottage clusters: [list sections here]. • Townhouses: [list sections here]. 	<p>Not applicable.</p>	<p><i>This subsection of Applicability states which sections of the model code are applicable to each type of housing.</i></p>
<p>2. <u>Applicability by Development Type and Location.</u></p>	<p>a. Except as specified in subsection (b), the standards of this code allow for the following development on lots or parcels (including lots of record) zoned for residential use that allow for the development of detached single-family dwellings:</p> <ul style="list-style-type: none"> • New duplexes and those created through conversion of existing detached single-family structures. • New triplexes, quadplexes, cottage clusters, and townhouses, and those created through conversion of existing detached single-family structures. <p>b. <u>Exceptions.</u> The standards in this code do not allow for the following, unless otherwise permitted by the jurisdiction through clear and objective standards, criteria, and procedures:</p> <ul style="list-style-type: none"> • On constrained lands or within infrastructure-deficient areas, the creation of triplexes, quadplexes, cottage clusters, or townhouses, or the creation of more than two dwelling units on a lot, including accessory dwelling units. • On lands that are not zoned for residential use, the creation of middle housing. This includes lands zoned primarily for commercial, industrial, agricultural, public, or mixed uses, even if those zones allow for the development of detached single-family dwellings. 	<p><i>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.</i></p>	<p>Update since MCTAC 4: <i>Infrastructure-deficient areas have been added to the exceptions (in addition to constrained lands); the draft model code would not require jurisdictions to allow middle housing, other than duplexes, in these areas. As noted in the commentary for definitions, these provisions may be subject to substantial revision. This section has also been cleaned up and slightly reorganized for the sake of readability.</i></p> <p><i>This subsection establishes the following:</i></p> <ul style="list-style-type: none"> • <i>Identifies where within “areas zoned for residential use” middle housing must be allowed.</i> <ul style="list-style-type: none"> ○ <i>Clarifies that the provisions only apply in residential zones in which detached single-family dwellings are permitted.</i> ○ <i>Per HB2001, duplexes must be allowed on all residential lots that allow SFD.</i> ○ <i>The proposed language for other middle housing types indicates that they are not allowed in designated resource/hazard areas (“constrained lands”) or in infrastructure-deficient areas “unless otherwise permitted by the jurisdiction through clear and objective standards, criteria, and procedures.” This gives local jurisdictions the ability to identify conditions where they would be allowed in these areas, as opposed to a blanket prohibition.</i> • <i>Indicates that the standards apply to new construction as well as conversions of single-family detached homes.</i> • <i>For lots on constrained lands or infrastructure-deficient areas, which only allow a duplex, the model code does not allow for creation of more than two units, including ADUs (i.e., an SFD with an ADU cannot be converted into a duplex unless the jurisdiction allows it). This is consistent with the MCMC.</i>

Standard	Model Code	Minimum Compliance	Commentary
			<ul style="list-style-type: none"> Note: we propose limiting the number of units allowed on a lot outside of constrained/infrastructure-deficient areas in the development standards under each housing type.
D. Relationship to Other Regulations	--	--	<p>Update since MCTAC 4: We propose adding this section to Chapter 1, because its standards are generally shared by all middle housing types.</p>
1. <u>Conflicts.</u>	In the event of a conflict between this code and the jurisdiction’s standards applicable to a proposed middle housing development, the standards of this code control.	Same as model code.	Proposed language is the same as the draft Medium Cities Model Code, except it refers to all middle housing.
2. <u>Public Works Standards.</u>	Clear and objective exceptions to public works standards granted to single-family dwellings shall also be granted to duplexes developed pursuant to this code.	<p>Duplex – If a local government or other utility service provider grants clear and objective exceptions to public works standards to single-family detached development, those same exceptions must also be granted to duplexes permitted under this section. <i>(draft OAR 660-046-0105.7 for Med Cities)</i></p> <p>Other Housing Types – N/A</p>	<p>For public works standards, it is appropriate to grant the same exceptions to duplexes that apply to single-family dwellings, because duplexes must be allowed on any lot that allows a detached single-family dwelling. However, it may not be appropriate to grant the same exceptions to other middle housing types, which need not be permitted on any single-family lot, and which represent higher-intensity development.</p>
3. <u>Protective Measures.</u>	Middle housing developed pursuant to this code shall comply with protective measures (including plans, policies, and regulations) adopted pursuant to statewide land use planning goals (e.g., environmental and natural hazard protections).	Same as model code.	<p>This clarifies that requirements of HB2001 do not override local protections for natural resources, natural hazards, or other regulatory protections adopted pursuant to Statewide Land Use Planning Goals. This could mean, for example, limiting building footprints in wetland areas, ensuring middle housing types are reviewed for historic compatibility in historic districts, or limiting building heights within the Willamette Greenway.</p> <p>Additional work on the definition and provisions related to “constrained lands” (in the applicability section) is still needed to more clearly address the circumstances under which local code provisions related to these goals can be used to limit middle housing in such areas.</p>

Chapter 2. Duplexes, Triplexes, and Quadplexes

Sections:

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

General Commentary: The duplex provisions from the draft Medium Cities Model Code have been carried forward to the LMCMC. We did not receive any comments from the MCTAC or RAC suggesting that the duplex standards should be any different for Large & Metro Cities. (Additional Note: In order to save space, commentary is provided within the Model Code and Minimum Compliance columns, rather than in a third column.)

Question for MCTAC: Do you think the duplex standards should be in a separate chapter from triplexes and quadplexes? It's useful to compare them at this stage, but it may be more appropriate to keep them separated, given that duplexes must be allowed on all single-family lots, and that the duplex standards generally defer to the jurisdiction's single-family standards.

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
A. Permitted Uses and Approval Process	<p><i>Commentary: Proposed language is the same as the draft Medium Cities Model Code, with added references to triplexes and quadplexes.</i></p> <p>Duplexes, triplexes, and quadplexes shall be permitted outright wherever they are allowed as provided in Chapter 1, Section C (Applicability). Duplexes, triplexes, and quadplexes shall be subject to the same approval process as the local jurisdiction applies to detached single-family dwellings in the same zone, and shall be subject to only clear and objective standards, approval criteria, conditions, and procedures. Alternatively, an applicant may choose to submit an application for a duplex, triplex, or quadplex subject to discretionary standards and criteria if such a process is available in the subject jurisdiction.</p>			<p>Duplex – Local governments must permit duplexes outright on each lot or parcel zoned for residential use that allows for the development of detached single-family structures. Local governments must apply the same approval process to duplexes as detached single-family dwellings in the same zone. Local governments may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of duplexes pursuant to OAR 660-008-0015. <i>(draft OAR 660-046-0104 for Med Cities)</i></p> <p>Triplex, Quadplex – see duplex, except refer to areas where triplexes and quadplexes are allowed pursuant to Applicability section</p>
B. Development Standards	<p><i>Commentary: Similar to the Medium Cities Model Code, we propose subjecting duplexes, triplexes and quadplexes to all clear and objective standards that apply to single-family dwellings, unless the model code provides different standards. Triplexes and quadplexes are proposed to be subject to more specific model code standards than duplexes, to ensure that these housing types are appropriately scaled to single-family neighborhoods. Numeric standards presented in [brackets] indicate either a choice between two options or an initial draft that is subject to change.</i></p> <p>Except as noted below, duplexes, triplexes, and quadplexes developed pursuant to this code shall meet all clear and objective development standards that the jurisdiction applies to detached single-family structures in the same zone, unless those standards conflict with this code.</p>			--

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
	Development standards that the jurisdiction applies only to duplexes, triplexes, or quadplexes, or to multifamily development, shall not apply to duplexes, triplexes, or quadplexes developed pursuant to this code.			
1. <u>Number of Units.</u>	-- <i>(For duplexes, this is addressed in the Applicability section in Chapter 1.)</i>	<p>Commentary: <i>This provision is intended to clarify that the model code does not allow the creation or conversion of a triplex or quadplex from a single-family house that has an existing ADU (thus creating more than three or four units on a lot). This is consistent with the limit proposed for duplexes. <u>Note:</u> If the preferred option for the model code is to allow detached triplexes and quadplexes, this provision would likely need to be revised. In that case, a triplex with an ADU would not be operationally different than a quadplex and may be acceptable. The model code would still limit the number of units on a lot to four units for quadplexes.</i></p> <p>This code does not allow for the creation of more than the following number of dwelling units on a lot, including accessory dwelling units:</p> <ul style="list-style-type: none"> • <i>For triplexes: three (3) units;</i> • <i>For quadplexes: four (4) units.</i> 		Same as model code.
2. <u>Minimum Lot Size.</u>	-- <i>(See general statement under Section B.)</i>	<p>Commentary: <i>Several options for minimum lot size standards are presented below. [Note: standards to limit massing/bulk (e.g., Floor Area Ratio—see section B.7) will work to limit the scale of buildings on smaller lots. Those standards should be considered in conjunction with minimum lot size.]</i></p> <ul style="list-style-type: none"> • OPTION 1: The minimum lot size for a triplex or quadplex is the same as the minimum lot size for a detached single-family dwelling in the same zone. • OPTION 2: The minimum lot size for a triplex or quadplex is the same as the minimum lot size for a detached single-family dwelling in the same zone, except that no minimum lot size shall be less than: <ul style="list-style-type: none"> ○ [5,000 sf] for a triplex; or ○ [7,000 sf] for a quadplex. • OPTION 3: Minimum lot size for a triplex or quadplex is calculated as a percentage of the minimum lot size for a detached single-family dwelling in the same zone as follows: <ul style="list-style-type: none"> ○ Triplex: [125 / 150] percent; and ○ Quadplex: [150 / 200] percent. • OPTION 4: The minimum lot size is based on the gross floor area (GFA) of the triplex or quadplex as follows: <ul style="list-style-type: none"> ○ If the GFA is no larger than 2,800 sf, the minimum lot size is the same as the minimum lot size for a detached single-family dwelling in the same zone; ○ If the GFA is over 2,800 sf, the minimum lot size is calculated as a percentage of the minimum lot size for a detached single-family dwelling in the same zone as follows: 		<p>Duplex – A local government may not require a minimum lot size that is greater than the minimum lot size required for a detached single-family structure in the same zone. <i>(draft OAR 660-046-0105.1.a for Med Cities)</i></p> <p>Triplex, Quadplex – <i>minimum lot size no less than minimum lot size for single-family detached in same zone</i></p>

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
		<ul style="list-style-type: none"> Triplex: [125 / 150] percent; and Quadplex: [150 / 200] percent. 		
3. <u>Minimum Lot Width.</u>	-- <i>(See general statement under Section B.)</i>	<p>Commentary: Two options for minimum lot width are presented below. Option 1 defers to the jurisdiction’s standards for detached single-family dwellings. Option 2 is intended to ensure that lots have an appropriate width for the shape and size of the triplex or quadplex. The thinking is that lots will need to be wider for side-by-side triplexes and quadplexes (with three or four street-facing units), than for stacked buildings (with only one or two street-facing units). Note: some jurisdictions regulate minimum lot width on a per-unit basis (e.g., 30 feet per unit). This could be problematic for middle housing if the model code defers to the local jurisdiction’s minimum lot width standards.</p> <p>OPTION 1: The minimum lot width for a triplex or quadplex is the same as the minimum lot width for a detached single-family dwelling in the same zone.</p> <p>OPTION 2: The minimum lot width for a triplex or quadplex is the same as the minimum lot width for a detached single-family dwelling in the same zone, except that no minimum lot width shall be less than [20 feet] per street-facing ground-floor unit.</p>		<p>Duplex – same as model code</p> <p>Triplex, Quadplex – minimum lot width no less than minimum lot width for single-family detached in same zone</p>
4. <u>Maximum Density.</u>	The jurisdiction’s pre-existing density maximums and minimum lot sizes for duplexes do not apply to duplexes permitted pursuant to this code.	<p>Commentary: The regulations would control the number of lots per acre, not the number of units per acre. Depending on the option selected for minimum lot size, this approach could allow for an increase of up to 4 times the maximum density currently allowed in a SF zone (e.g., under Options 1, 2 or 4, up to four units could be allowed on a single family lot.</p> <p>The maximum density for triplexes and quadplexes shall be determined by the minimum lot size as provided in Section B.1.</p>		<p>Duplex – For the purposes of calculating density, if a local government applies density maximums in a zone, it may not apply those maximums to the development of duplexes. <i>(draft OAR 660-046-0105.2.a for Med Cities)</i></p> <p>Triplex, Quadplex – same as model code</p>
5. <u>Setbacks.</u>	<p>Commentary: Proposed language is the same as the draft Medium Cities Model Code, with added references to triplexes and quadplexes. Note: for <u>maximum setbacks</u>, development would be subject to the same standards that apply to detached single-family, per the general statement under Section B.</p> <p>Duplexes, triplexes and quadplexes shall be subject to the same minimum and maximum setback standards that are applicable to detached single-family dwellings in the same zone provided that in no case shall a minimum front setback of greater than 20 feet or a minimum rear setback of greater than 15 feet be required except for those minimum setbacks applicable to garages and carports.</p>			<p>Duplex – A local government may not require setbacks to be greater than those applicable to detached single-family structures in the same zone. <i>(draft OAR 660-046-0105.3.a for Med Cities)</i></p> <p>Triplex, Quadplex – see duplex</p>
6. <u>Height.</u>	-- <i>(See general statement under Section B.)</i>			<p>Duplex – Duplexes may not be subject to lower maximum height standards than those applicable to detached single-family structures in the same zone. <i>(draft OAR 660-046-0105.4.a for Med Cities)</i></p> <p>Triplex, Quadplex – see duplex</p>

Standard	Model Code			Minimum Compliance							
	Duplex	Triplex	Quadplex								
7. OPTIONS FOR REGULATING SCALE / BULK:											
<p>Commentary: Bulk generally refers to the relative size, volume, or massing of a building. Scale generally refers to how people perceive the size of a building compared to other buildings or forms. Bulk and scale are often regulated to avoid stark contrasts between adjacent buildings or all buildings in a neighborhood or district. Regulating building scale or bulk may be appropriate because triplexes and quadplexes are more likely to maximize the buildable envelope on the site, and the intent of HB2001 was to facilitate middle housing that is compatible with existing single-family neighborhoods.</p> <p>We are presenting four options for regulating building scale or bulk: (1) Maximum Lot Coverage, (2) Maximum Floor Area Ratio, (3) Maximum Unit Size, and (4) Bulk Plane Regulations. These standards could be used in combination or independently. Our initial recommendation is to apply <u>Maximum Floor Area Ratio (FAR)</u> standards to triplexes and quadplexes; however, we are presenting the other options for MCTAC discussion. Commentary for each of these options is included below. Additional information about FAR can be found on page 18 of this memo.</p>				--							
OPTION 1: Maximum Lot Coverage	<p>Commentary: Maximum lot coverage standards are used widely in residential zones to control the intensity of development and to encourage open space on the site. A lower maximum lot coverage standard (35-50%) encourages multi-story buildings and a higher proportion of open space on the site, but may present a barrier to multi-unit development if the standard overly restricts the size of the structure. A higher maximum lot coverage standard (50-80%) generally allows for larger buildings and may also encourage single-story development. Lot coverage could be challenging to implement in the model code because jurisdictions calculate lot coverage differently (some include all impervious surfaces, others only include buildings and structures). And some jurisdictions regulate minimum landscape area instead of lot coverage. Per the definitions section, we propose including impervious surfaces in the calculation. We attempted to address the issue of jurisdictions regulating landscape area instead of lot coverage below.</p>			<p>Duplex – Local governments are not required to apply lot coverage or floor area ratio standards to new duplexes. However, if the local government chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for duplex that is less than established for single family detached structure in the same zone. <i>(draft OAR 660-046-0105.6 for Med Cities)</i></p> <p>Triplex, Quadplex – see duplex</p>							
	<p>-- <i>(See general statement under Section B.)</i></p>	<p>For jurisdictions that do not regulate maximum lot coverage, and instead regulate minimum landscape area as a percentage of the site, maximum lot coverage shall be equal to 100 percent minus the minimum landscape area for the site.</p> <ul style="list-style-type: none"> OPTION 1a: The maximum lot coverage for a triplex or quadplex is the same as the maximum lot coverage for a detached single-family dwelling in the same zone. OPTION 1b: The maximum lot coverage for a triplex or quadplex is the same as the maximum lot coverage for a detached single-family dwelling in the same zone, except that maximum lot coverage of less than [60 percent] shall not apply. OPTION 1c: The maximum lot coverage for a triplex or quadplex is based on the size of the lot, as provided below: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Lot size</th> <th>Maximum Lot Coverage</th> </tr> </thead> <tbody> <tr> <td>Less than 3,000 sf</td> <td>80 percent</td> </tr> <tr> <td>3,000 sf or more but less than 5,000 sf</td> <td>75 percent</td> </tr> <tr> <td>5,000 sf or more but less than 20,000 sf</td> <td>70 percent</td> </tr> <tr> <td>20,000 sf or more</td> <td>60 percent</td> </tr> </tbody> </table> OPTION 1d: The maximum lot coverage for a triplex or quadplex is equal to the maximum lot coverage for a detached single-family dwelling in the same zone, plus an additional [10 percent]. 	Lot size		Maximum Lot Coverage	Less than 3,000 sf	80 percent	3,000 sf or more but less than 5,000 sf	75 percent	5,000 sf or more but less than 20,000 sf	70 percent
Lot size	Maximum Lot Coverage										
Less than 3,000 sf	80 percent										
3,000 sf or more but less than 5,000 sf	75 percent										
5,000 sf or more but less than 20,000 sf	70 percent										
20,000 sf or more	60 percent										

Standard	Model Code			Minimum Compliance										
	Duplex	Triplex	Quadplex											
OPTION 2: Maximum Floor Area Ratio (FAR)	<p>Commentary: Floor Area Ratio is a ratio of the floor area in the structure (usually the livable space) to the square footage of the site. A maximum FAR standard works by limiting the size of a building in proportion with the size of the lot. A primary advantage of FAR is that it balances compatibility and flexibility. FAR ensures relatively consistent size of buildings but provides flexibility in how floor area is distributed across the site and across multiple units. Two buildings with the same FAR on the same or similar-sized lot can look very different and include a range of dwelling sizes, but the overall bulk and scale of the buildings will be generally similar. We also recommend this option because it is relatively simple to administer. Note: FAR should be considered together with options for Minimum Lot Size (section B.1), because FAR is calculated based on the size of the lot. See page 18 of this memo for additional discussion about FAR.</p> <p>For triplexes and quadplexes, we are presenting two options for FAR standards below. Option 2a applies a flat FAR to all tri and quad structures, regardless of the zone. Option 2b scales the allowable FAR based on the minimum lot size in the zone. The rationale for Option 2b is that zones with smaller minimum lot sizes are intended for higher-intensity development, and will generally have smaller lots; therefore, allowing larger buildings (relative to the lot size) in these zones would be compatible with the zones’ intent and would make tri and quad development more feasible. In contrast, zones with larger minimum lot sizes are generally intended for lower-intensity development and will have larger lots. If maximum FAR is not reduced for these zones, very large triplexes and quadplexes could potentially be developed, which would be out of scale with single-family homes in the neighborhood. (Note: Portland and Bend both regulate FAR for middle housing. Portland’s draft standards for triplexes and quadplexes in single-dwelling zones [as part of the Residential Infill Project] scale the maximum FAR based on the zone. Bend applies a maximum FAR of 0.6 to 1 in its RS zone [a low-density zone that allows 4.0 to 7.3 units per gross acre]).</p>			<p>Duplex – Local governments are not required to apply lot coverage or floor area ratio standards to new duplexes. However, if the local government chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for duplex that is less than established for single family detached structure in the same zone. (draft OAR 660-046-0105.6 for Med Cities)</p> <p>Triplex, Quadplex – see duplex</p>										
	-- (See general statement under Section B.)	<ul style="list-style-type: none"> OPTION 2a: The maximum floor area ratio for a triplex or quadplex is 0.6 to 1. OPTION 2b: The maximum floor area ratio for a triplex or quadplex is based on the minimum lot size for a detached single-family dwelling in the same zone, as provided below: <table border="1"> <thead> <tr> <th>Minimum Lot Size in Zone</th> <th>Maximum FAR</th> </tr> </thead> <tbody> <tr> <td>Less than 3,000 sf</td> <td>0.9 to 1</td> </tr> <tr> <td>3,000 sf or more but less than 5,000 sf</td> <td>0.7 to 1</td> </tr> <tr> <td>5,000 sf or more but less than 20,000 sf</td> <td>0.6 to 1</td> </tr> <tr> <td>20,000 sf or more</td> <td>0.4 to 1</td> </tr> </tbody> </table>		Minimum Lot Size in Zone	Maximum FAR	Less than 3,000 sf	0.9 to 1	3,000 sf or more but less than 5,000 sf	0.7 to 1	5,000 sf or more but less than 20,000 sf	0.6 to 1	20,000 sf or more	0.4 to 1	
Minimum Lot Size in Zone	Maximum FAR													
Less than 3,000 sf	0.9 to 1													
3,000 sf or more but less than 5,000 sf	0.7 to 1													
5,000 sf or more but less than 20,000 sf	0.6 to 1													
20,000 sf or more	0.4 to 1													
OPTION 3: Maximum Unit Size	<p>Commentary: Limiting the floor area of individual dwelling units is another method for controlling the overall bulk and scale of the building. We do not recommend this approach because it could be overly restrictive. Having flexibility to have some larger and some smaller units will make it easier to design triplex and quadplex buildings, to respond to site conditions, and to provide flexibility for people who want to live in one unit and rent out others. (Note: The standard below is adapted from Tigard’s Quad standards.)</p>			<p>Duplex –</p> <p>Triplex, Quadplex –</p>										
	-- (See general statement under Section B.)	<p>The maximum square footage of each dwelling unit is:</p> <ol style="list-style-type: none"> For a triplex: [1,200 sf]; For a quadplex: [1,000 sf]. 												

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
OPTION 4: Bulk Plane Regulations	<p><i>Commentary: Bulk plane is a unique and interesting approach used by the City of Denver, which has an entirely form-based development code. However, we do not recommend this option because the regulations are complex and would be quite complicated to administer. This option may be considered as an alternative approach that jurisdictions could use to regulate building bulk/scale. (Note: The bulk plane standards are not fully fleshed out here; rather, the concept is presented more generally for the sake of discussion with the MCTAC.)</i></p>			<p>Duplex – Triplex, Quadplex –</p>
	<p>-- <i>(See general statement under Section B.)</i></p>		<p>A bulk plane is an imaginary line sloping from the perimeter of the lot toward the center of the lot which establishes a sloped maximum height standard along that plane. No portion of the building may exceed the height of the bulk plane.</p> <p>Denver’s system varies bulk plane requirements based on the neighborhood context of the zone, such as Suburban, Urban Edge, or Urban. There are two components to the bulk plane standard: the Bulk Plane Vertical Height, which is the height at which the sloped bulk plane originates, and the Bulk Plane Slope, which is the degree of the angle of the bulk plane (see Figure 1). See Figure 2 for an example of the bulk plane for an urban house and Figure 3 for an example of the bulk plane for a suburban house.</p>	
<p><i>Figure 1. Bulk Plane Measurements, City of Denver</i></p>		<p><i>Figure 2. Bulk Plane for an Urban House, City of Denver</i></p>		

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
	<p>Figure 3. Bulk Plane for a Suburban House, City of Denver</p>			
8. <u>Off-street Parking.</u>	No off-street parking is required for a duplex permitted pursuant to this code.	<p>Commentary: For triplexes and quadplexes, we are presenting three options for minimum parking requirements, intended to be commensurate with the draft standard for duplexes (no minimum parking). Option 1 would require no minimum parking; Option 2 would require the same amount of parking as for a single-family detached dwelling; and Option 3 would require either one or two spaces, but also offer a credit for on-street parking.</p> <ul style="list-style-type: none"> • OPTION 1: No off-street parking is required for a triplex or quadplex permitted pursuant to this code. • OPTION 2: <ol style="list-style-type: none"> a. <u>Required Off-street Parking.</u> The minimum number of required off-street parking spaces is: <ol style="list-style-type: none"> i. For a triplex, one (1) space; ii. For a quadplex, two (2) spaces. A credit for on-street parking shall be granted for some or all the required off-street parking as provided in Subsection b. No additional parking spaces shall be required for conversion of a single-family detached home to a triplex or quadplex. b. <u>On-Street Credit.</u> If on-street parking spaces meet all the standards in Subsections i-iv below, they shall be counted toward the minimum off-street parking requirement. <ol style="list-style-type: none"> i. On-street parking must be allowed on the side of the street where the space is to be provided. ii. The space must be a minimum of 22 feet long; iii. The space must be abutting the subject site; and iv. The space must not obstruct a required sight distance area. 	<p>Duplex – A local government may not require more than a total of two (2) off-street parking spaces. <i>(draft OAR 660-046-0105.5.a for Med Cities)</i></p> <p>Triplex – A local government may not require more than a total of three (3) off-street parking spaces.</p> <p>Quadplex – A local government may not require more than a total of four (4) off-street parking spaces.</p> <p>Nothing in this section precludes a local government from allowing on-street parking credits to satisfy off-street parking requirements. <i>(draft OAR 660-046-0105.5.b for Med Cities)</i></p>	

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
		<ul style="list-style-type: none"> OPTION 3: The total number of off-street parking spaces required for a triplex or quadplex is the same as the total number of off-street parking spaces required for a detached single-family dwelling in the same zone. <i>(Note: The on-street parking credit could be offered in conjunction with this option as well.)</i> 		
C. Design Standards	<p>New duplexes shall meet all clear and objective design standards (e.g., entry orientation, window coverage, articulation, etc.) that the jurisdiction applies to detached single-family structures in the same zone, unless those standards conflict with this code.</p> <p>Other design standards that the jurisdiction applies only to duplexes shall not apply to duplexes developed pursuant to this code.</p>	<p>Commentary: <i>Our initial recommendation is to regulate four basic design elements for triplexes and quadplexes: (1) entry orientation, (2) windows, (3) garages and off-street parking areas, and (4) driveway approaches. For all other design elements, we propose deferring to the jurisdiction's standards for single-family dwellings.</i></p> <p>New triplexes and quadplexes shall meet:</p> <ul style="list-style-type: none"> The design standards in subsections 1 through 4, below; and All other clear and objective design standards that the jurisdiction applies to detached single-family structures in the same zone, unless those standards conflict with this code. <p>Other design standards that the jurisdiction applies only to triplexes and/or quadplexes shall not apply to triplexes and quadplexes developed pursuant to this code.</p>		<p>Duplex – Local governments are not required to apply design standards to new duplexes. However, if the local government chooses to apply design standards to new duplexes, it may only apply all clear and objective design standards that the local government applies to detached single-family structures in the same zone.</p> <p>A local government may not apply design standards to duplexes created through internal conversion of a single-family detached structure. <i>(draft OAR 660-046-0106 for Med Cities)</i></p> <p>Triplex –</p> <p>Quadplex –</p>
1. <u>Entry Orientation.</u>	-- <i>(See general statement under Section C.)</i>	<p>Commentary: <i>We suggest applying entry orientation standards to at least one building entrance for triplexes and quadplexes. Options 1 through 3 present various way of approaching the entry orientation standard, based on review of best practices from various jurisdictions' development codes.</i></p> <ul style="list-style-type: none"> OPTION 1: At least one main entrance for each structure must face a street property line. <i>(Adapted from Tigard's Quad standards.)</i> OPTION 2: At least one main entrance for each structure must be oriented toward a street, front lot line, or common open space that is adjacent to the street. <i>(Adapted from Salem's standards for three- and four-family uses.)</i> OPTION 3: At least one main entrance for each structure must: <ol style="list-style-type: none"> Be within 8 feet of the longest street-facing wall of the dwelling unit; and Either: <ol style="list-style-type: none"> Face the street. Be at an angle of up to 45 degrees from the street; or Open onto a porch. The porch must: 		

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
		<p>(A) Be at least 25 square feet in area;</p> <p>(B) Have at least one entrance facing the street; and</p> <p>(C) Have a roof that is:</p> <ul style="list-style-type: none"> ▪ No more than 12 feet above the floor of the porch; and ▪ At least 30 percent solid. This standard may be met by having 30 percent of the porch area covered with a solid roof, or by having the entire area covered with a trellis or other open material if no more than 70 percent of the area of the material is open. <p style="text-align: center;"><i>Figure 4. Options for Entrance Standards, City of Portland</i></p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>Figure 110-5 Main Entrance Facing the Street</p> </div> <div style="text-align: center;"> <p>Figure 110-6 Main Entrance Opening onto a Porch</p> </div> </div> <p style="text-align: center;"><i>(Option 3 adapted from Portland’s standards for single-dwelling residential zones; these apply to all structures in single-dwelling zones, including proposed new Residential Infill options.)</i></p>		
2. <u>Windows.</u>	-- <i>(See general statement under Section C.)</i>	<p>Commentary: We suggest a modest minimum window coverage standard for triplexes and quadplexes. Windows help create more interesting facades as well as enabling more “eyes on the street,” which can have benefits for crime prevention and perceptions of safety in residential areas, and allowing more natural light into the interior of the home.</p> <p>A minimum of 15 percent of the area of all street-facing facades must include windows or entrance doors. Window area is the aggregate area of the glass within each window, including any interior grids, mullions, or transoms. Door area is the area of the portion of a door that moves and does not include the frame. <i>(Adapted from Tigard’s Quad standards and Portland’s standards for single-dwelling residential zones; both cities apply the same standard.)</i></p>		
3. <u>Garages and Off-street Parking Areas.</u>	-- <i>(See general statement under Section C.)</i>	<p>Commentary: The way in which vehicle parking is integrated into a development has a substantial impact on the appearance of the development from the street. We propose standards that limit the width of parking areas and/or garages, and potentially that regulate how close garages can be</p>		

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
		<p><i>to the street, relative to the dwelling units. The intent is to promote a pedestrian-friendly environment by limiting the dominance of vehicle storage on the site. Three optional approaches are presented below.</i></p> <ul style="list-style-type: none"> <p>OPTION 1: Off-street vehicle use areas shall not exceed 50 percent of the buildable width along each street. <i>(Adapted from Salem’s standards for three- and four-family uses.)</i></p> <p>OPTION 2: Garages on the front facade and off-street parking areas in the front yard, are permitted in compliance with the following standards:</p> <ol style="list-style-type: none"> Outdoor on-site parking and maneuvering areas shall not exceed a total of forty feet wide or fifty percent of the lot frontage, whichever is less; and The combined width of all garages shall not exceed forty feet or fifty percent of the lot frontage, whichever is less. <p><i>(Adapted from Oregon City’s standards for 3-4 plexes.)</i></p> <p>OPTION 3: <u>Garage Door Standards.</u></p> <ol style="list-style-type: none"> The maximum combined garage door width facing the street is 50 percent of the total building width. In addition to complying with the front setbacks for the respective zoning districts, the front of the garage or carport can be no closer to the front lot line than the longest street-facing wall of the dwelling unit that encloses livable space, except that: <ol style="list-style-type: none"> If there is a covered front porch, the garage or carport can extend up to five feet in front of the enclosed livable space, but no further than the front of the porch. A garage or carport may extend up to 10 feet in front of the enclosed livable space if there is enclosed livable space or a covered balcony above at least a portion of the garage or carport. <p><i>(Adapted from Bend’s standards for duplexes and triplexes.)</i></p> <p>OPTION 4: Triplexes and quadplexes developed pursuant to this code shall not be subject to mandates for construction of a garage or carport. <i>(Note: Option 4 could be combined with any of the other options.)</i></p> 		
4. <u>Driveway Approach.</u>	-- <i>(See general statement under Section C.)</i>	<p>Commentary: <i>Similar to proposed garage and parking area standards, we suggest limiting driveways for triplexes and quadplexes. The proposed standards are adapted from Bend’s standards for duplexes and triplexes. When applied to corner lots, these provisions currently are not entirely consistent with the objective of having at least one entrance fronting the adjacent street. To the extent this is a priority, additional changes may be needed.</i></p> <p>Triplexes may have a maximum of [three] driveway approaches and quadplexes may have a maximum of [four] driveway approaches in compliance with the following:</p>		

Standard	Model Code			Minimum Compliance
	Duplex	Triplex	Quadplex	
		<ul style="list-style-type: none"> a. The total width of all driveway approaches must not exceed 32 feet per frontage, as measured at the line. For lots or parcels with more than one frontage, see subsection 4.c. b. Driveway approaches may be separated when located on a local street. If approaches are separated, they must be separated by a minimum of seven feet. c. In addition, lots or parcels with more than one frontage must comply with the following: <ul style="list-style-type: none"> i. Lots or parcels must access the street with the lowest classification. For lots or parcels abutting an improved or improvable alley, access must be taken from the alley. ii. Lots or parcels with frontages only on collectors and/or arterial streets may have one driveway approach. iii. Triplexes and quadplexes on lots or parcels with frontages only on local streets may have two driveway approaches not exceeding 32 feet in total width on one frontage or one maximum 16-foot-wide driveway approach per frontage. 		
D. Conversions to Duplex, Triplex, and Quadplex	<p><i>Commentary: Proposed language is the same as the draft Medium Cities Model Code, with added references to triplexes and quadplexes.</i></p> <p>Conversion of an existing detached single-family structure to a duplex, triplex, or quadplex is allowed, pursuant to Chapter 1, Section C (Applicability), provided that the conversion does not increase nonconformance with applicable clear and objective standards.</p>			Same as model code.

Supplemental Information: Floor Area Ratio (FAR)

Floor Area Ratio (FAR) is a ratio of the floor area in the structure (usually the livable space) to the square footage of the site. The city currently uses FAR to regulate the size of commercial and mixed-use buildings in some zones. A maximum FAR standard works by limiting the size of a building in proportion with the size of the lot. Figure 5 provides an abstract illustration of FAR.

Figure 5. FAR of 1 to 1 (Salem, OR).

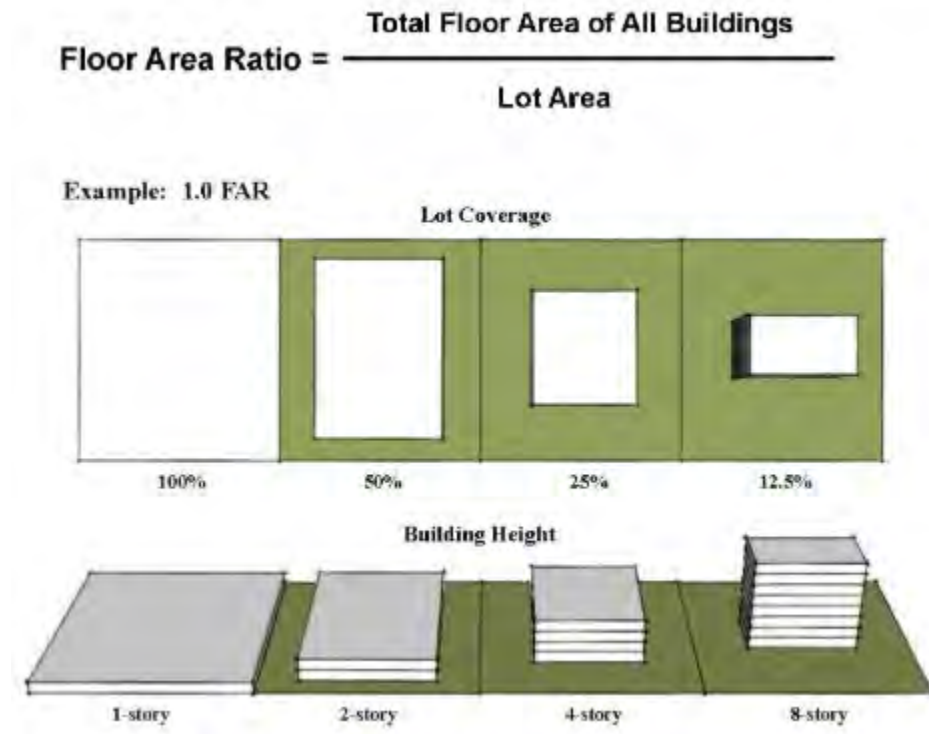
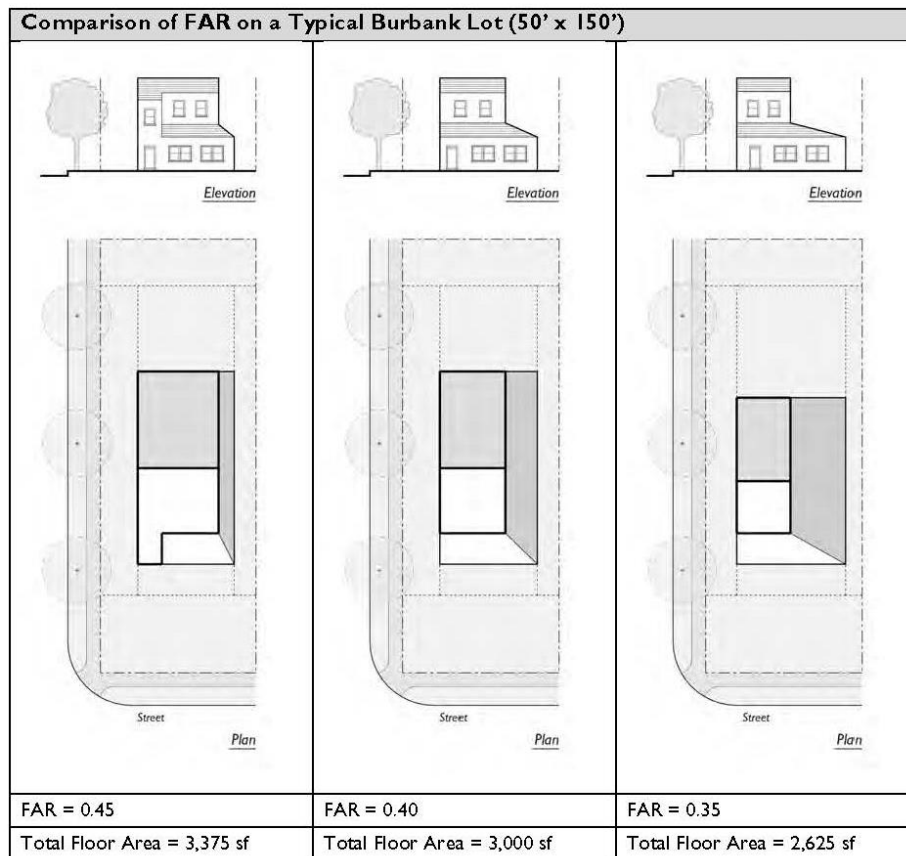


Figure 6 provides an example of a house meeting three different FAR standards on the same size lot.

Figure 6. Example of various FAR amounts (Burbank, California)



Note: Portland and Bend both apply FAR in their single-dwelling/low-density zones.

The primary advantage of FAR is that it balances compatibility and flexibility. FAR ensures relatively consistent size of buildings but provides flexibility in how floor area is distributed across the site and across multiple units. Two buildings with the same FAR on the same or similar-sized lot can look very different and include a range of dwelling sizes, but the overall bulk and scale of the buildings will be generally similar.

The following tables provide examples of what the maximum allowable building sizes would be based on Options 2a and 2b for Maximum FAR standards. Maximum building sizes are calculated based on several example lot sizes. The tables also identify what the resulting average unit sizes would be for triplexes and quadplexes.

Option 2a: FAR of 0.6 to 1

Example lot size (sf)	Max building size (sf)	Avg Unit Size (sf)	
		Triplex	Quadplex
3,000	1,800	600	450
5,000	3,000	1,000	750
7,000	4,200	1,400	1,050
10,000	6,000	2,000	1,500

20,000 | 12,000 | 4,000 3,000

Option 2b: FAR scaled based on minimum lot size in the zone

Standard Min lot size in zone	FAR	Example lot size (sf)	Max building size (sf)	Avg Unit Size (sf)	
				Triplex	Quadplex
<3,000 sf	0.9	1,500	1,350	450	338
		2,000	1,800	600	450
		2,500	2,250	750	563
3000 sf - <5000 sf	0.7	3,000	2,100	700	525
		4,000	2,800	933	700
		4,500	3,150	1,050	788
5000 sf - <20,000 sf	0.6	5,000	3,000	1,000	750
		10,000	6,000	2,000	1,500
		15,000	9,000	3,000	2,250
20,000+ sf	0.4	20,000	8,000	2,667	2,000
		25,000	10,000	3,333	2,500
		30,000	12,000	4,000	3,000

Floor Area Ratio Examples

The following examples are intended to illustrate FAR based on several building prototypes. These four examples calculate what the FAR would be if you placed the prototypes on lots of various sizes. Prototypes include triplexes and quadplexes in both side-by-side and stacked configurations. FAR calculations are highlighted in yellow.

1. Triplex, side-by-side (source: <https://www.houseplans.pro/plans/plan/t-419>)



Building Info	Lot size	FAR
Total size: 3,780 sf	4,000 sf	0.95
Unit size: 1,260 sf (3 bedroom)	5,000 sf	0.76
Height: 26 ft	7,000 sf	0.54

10,000 sf	0.38
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2. Triplex, stacked (source: <https://www.thehouseplanshop.com/027m-0019.php>)



<u>Building Info</u>	<u>Lot size</u>	<u>FAR</u>
Total size: 3,011 sf	4,000 sf	0.75
Unit size: 2x 1,010 sf (2 bedroom)	5,000 sf	0.60
1x 991 sf (2 bedroom)	7,000 sf	0.43
Height: 35 ft	10,000 sf	0.30
	20,000 sf	0.15

3. Quadplex, side by side (source: <https://www.thehouseplanshop.com/031m-0090.php>)



<u>Building Info</u>	<u>Lot size</u>	<u>FAR</u>
Total size: 5,108 sf	4,000 sf	1.28
Unit size: 1,277 sf (3 bedroom)	5,000 sf	1.02
Height: 25 ft	7,000 sf	0.73
	10,000 sf	0.51
	20,000	0.26

4. Quadplex, stacked (source: <https://www.thehouseplanshop.com/027m-0067.php>)



<u>Building Info</u>	<u>Lot size</u>	<u>FAR</u>
Total size: 4,610 sf	4,000 sf	1.15
Unit size: 2x 1,571 sf (3 bedroom)	5,000 sf	0.92
2x 734 sf (1 bedroom)	7,000 sf	0.66
Height: 33 ft	10,000 sf	0.46
	20,000 sf	0.23

Middle Housing Technical Advisory Committee Meeting #5

April 21, 2020; 9:00am – 12:00 pm

Department of Land Conservation and Development (DLCD)

Zoom Virtual Meeting



Public Comment Summary March 24 – April 13, 2020

Date	Commenter	Commenter Type	Comments Summary	Comment Type
4/7/2020	Derrick Tokos	RAC	Provides an example of a multi-unit, market rate development in Newport that has been delayed in construction due to a freeze on construction loans. Recommends consideration by HPSTAC of larger economic forces affecting housing provision.	Email
4/7/2020	Theresa Cherniak	RAC	Includes a series of recommendations to the Model Code including: - 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	Heather Richards	RAC	Information on the average duplex size over the past ten years for duplexes permitted in McMinnville.	Email
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
4/10/2020	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	Email

			standards/procedures which add cost without serving a compelling purpose (e.g. a tree inventory without preservation requirements)	
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From: [Derrick Tokos](#)
To: [Stuckmayer, Ethan](#)
Cc: [Young, Kevin](#); [Phipps, Lisa](#); [Edging, Sean](#)
Subject: FW: Wyndhaven Ridge
Date: Tuesday, April 7, 2020 11:12:08 AM

Hi Ethan,

I wanted to bring this example to your attention, as it seems relevant to the work you are doing. Wyndhaven Ridge is a 66-unit, market rate multi-family project on the north side of Newport that is just about finished with plan review. The developer was trying to get their construction loan in place so that they could pull permits for the apartment buildings by April 15th.

Hopefully, the freeze by this lender on construction loans is as temporary as the developer hopes it will be, and that this is not indicative of a larger trend. This particular developer also shared with me that he is concerned about supply chain disruptions and is planning to front load the purchase of construction materials as a hedge.

As you move forward with your work with the Housing Production Strategy Technical Advisory Committee, it would be helpful if there could be consideration about how large scale economic factors that influence the production of housing, such as a disruption to construction lending, should be factored into the reporting and monitoring program.

Derrick I. Tokos, AICP

Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

From: Todd Woodley <toddw@woodleyresources.com>
Sent: Tuesday, April 07, 2020 8:33 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Wyndhaven Ridge

Derrick,

Just to give you an update as it relates to being permitted, our lender has put a hold on all construction loans for the time being. They have indicated a re-visit May 1, so we won't be needing to obtain permits until at least May 1, and likely delayed out to May 15th.

That being said, we are overnight mailing you the revised public plans. We will want to continue with this approval process as we would like to be able to construct public improvements once we're bank approved. Also, we're hoping to get going as soon as May 15th on concrete, so we'll still want to process this as soon as possible.

We also expect revised private set drawings for Site grading, sewer, domestic water, and storm sewer. Hoping to have those submitted by early next week as well.

Thanks,
Todd

Todd Woodley
503-931-3894



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/>

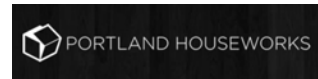
In summary, detached plex development will assist in accomplishing these goals:

- 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



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



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.

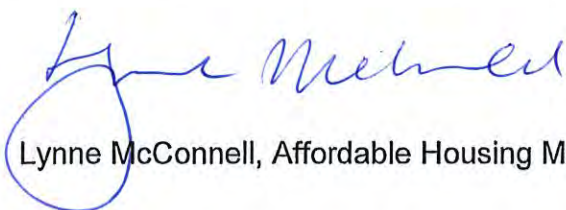
To further clarify the need to allow detached plexes, please find the attachment submitted to the advisory committees that summarizes comments from the City of Bend Planning Department regarding why applicants choose to develop a detached duplex.

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*

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.

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.