

Public Comment Regarding Consistency Between the Proposed Statewide Cottage Cluster Definition and OAR 660-046-0220(4)

Department of Land Conservation and Development

Dear Rulemaking Committee:

Thank you for the opportunity to comment on the proposed amendments to OAR Chapter 660, Division 46 implementing House Bill 2138.

After reviewing House Bill 2138, the proposed administrative rules, and the City of Portland's June 2026 State Land Use Compliance Project draft, I believe some provisions are ambiguous and could result in inconsistent implementation among Oregon jurisdictions.

I believe DLCD has appropriately implemented House Bill 2138 by defining Cottage Clusters using an average dwelling floor area of 1,400 square feet per dwelling unit, calculated while **excluding garages and porches** from that average. I support the implementation of the updated definition of "small footprint or floor area." It provides greater flexibility in Cottage Cluster design while preserving the character and intent of Cottage Cluster development. But it is not clear to me if the small footprint and floor area are both 1,400 sq ft.

I feel there is also a need for clarification of the proposed draft of the rule changes because provisions of the proposed rules appear to create uncertainty regarding whether local governments may adopt standards that differ from DLCD's proposed statewide Cottage Cluster definition. In the proposed draft OAR 660-046-0220(4)(e) states that:

"A Large City may limit the minimum or maximum size of dwelling units in a Cottage Cluster..."

If a city can regulate the size of the dwelling and has the ability to include or exclude the attached garage in the calculations of the footprint. The wording in 4(e) is not easily understood, and there is no mention of how garages would be addressed in the 1,400 sq ft average per unit area. Could a footnote be added in the Cottage Cluster definition to address this?

1. Relationship Between the Proposed Cottage Cluster Definition and Section 4(e)

House Bill 2138 amended the statutory definition of Cottage Clusters by replacing the previous definition with the broader phrase "small footprint or floor area". Rather than defining that phrase in statute, the Legislature directed DLCD to adopt administrative rules implementing those terms. DLCD has proposed to implement that legislative direction by defining Cottage Clusters using an average dwelling floor area of 1,400 square feet, excluding garages and porches from that average calculation. Later in the proposed rules,

Large Cities: OAR 660-046-0220(4)(e) provides that a Large City may regulate the minimum or maximum size of dwelling units within a Cottage Cluster. And has the option of including or excluding garages and porches.

My reading of the proposed rules is that a Large City may elect to regulate Cottage Cluster minimum lot size under subsection (4)(a) and, by doing so, may then utilize subsection (4)(e) to adopt an alternative dwelling-size standards and sub 900 sq ft building footprints. The 900 sq ft Cottage Cluster building footprint being brought up in this section adds the uncertainty of small footprint size.

2. The City of Portland's Proposed Compliance Code Draft

The City of Portland's June 2026 State Land Use Compliance Project draft demonstrates the need for clarification of the proposed DLCD rules is important. DLCD's proposed Cottage Cluster definition calculates average dwelling floor area while excluding garages and porches from that calculation.

Portland's proposed compliance code includes attached accessory structures, including attached garages, when calculating both the maximum building coverage and the average dwelling size for Cottage Cluster dwelling units. As a result, Portland's proposed implementation appears to differ from DLCD's proposed Cottage Cluster definition.

This example illustrates why I believe the final rules should clearly state:

- Whether a **Medium City** can use section (4)e to regulate Cottage Cluster dwelling size.
- whether garages, porches, and attached accessory structures must continue to be excluded from average dwelling floor-area calculations;
- whether local governments must apply DLCD's statewide Cottage Cluster definition when regulating Cottage Cluster dwelling size; and
- whether subsection (4)(e) authorizes local governments to adopt Cottage Cluster standards that differ from DLCD's statewide definition.

Clarifying these issues before adoption of the final rules will promote consistent implementation of House Bill 2138 throughout Oregon.

Thank you for your consideration of these comments.

Respectfully,

Brian Nelson
503-936-5127

briannelson.us@gmail.com