

HB 2001 Interpretation and Implementation FAQ

Updated August 16, 2021

General Questions

Q 1: How is model code applied, and does it pre-empt existing regulations for a jurisdiction?

A: *If a city is not in compliance, the model code does not necessarily apply in its entirety. If cities are out of compliance for a certain section (i.e., townhouses), the model code would not apply for other sections that are in compliance with Division 46 (i.e., plexes). In this scenario, only the townhouse portion of the model code would preempt local codes.*

Q 2: What happens if a city misses the June 30, 2021/2022 deadline for middle housing codes by only a short time period because of public process requirements? Is model code effective during that time?

A: *Yes, model code becomes effective July 1, 2021/2022, unless the city has adopted and made effective its own Division 46-compliant code regulating middle housing. The Medium/Large City Model Code would be in effect until such time the city adopts and makes effective its own Division 46 code.*

Q 3: Can a city apply for a time extension if we are running up against issues in adoption by June?

A: *HB 2001 included an extension of the enactment of middle housing provisions only in the case of significant infrastructure deficiencies in water, transportation, stormwater, and sewer systems. That is not for delaying the enactment of middle housing across entire city. It is for delaying the enactment of localized infrastructure deficiencies. For Medium Cities, the deadline for applying for such an extension was December 31, 2020. For Large Cities, the deadline for applying for such an extension was June 30, 2021.*

Q 4: Some cities have tree ordinance processes, especially tree preservation, which could clearly come into conflict with middle housing provisions. Do you suspect litigation around this provision?

A: *If a tree preservation provision applied equally to proposals to develop a single detached dwelling on a lot, then it would equally be applied to middle housing development on the lot, even if it meant a developer couldn't put middle housing development on-site. This is similar to a floodplain or natural resource protection, where development might be limited to a particular footprint.*

Q 5: Can you elaborate assumption of 3% increase in capacity and what that means?

A: *Section 5(6)(b) of HB 2001 was introduced by the Oregon Homebuilders Association. The statute applies to how cities can calculate the capacity of buildable land. A city may assume only 3% growth in middle housing as an increased efficiency measure to accommodate an identified housing need. A city only also assume a higher rate of middle housing growth if the city can produce a quantifiable justification. This provision is not related to how a city regulates the siting and design of middle housing and is more related to how cities conduct Buildable Lands Inventories and Housing Needs Analyses.*

Q 6: If our city adopted a middle housing code a few years ago, before HB 2001 rules were adopted, how can we contend we are compliant with HB 2001?

A: *While DLCD is not the final decision maker on whether a city is compliant with HB 2001 (the Land Use Board of Appeals or other court will ultimately settle compliance disputes), the department is more than happy to review and comment on city codes that were adopted prior to the HB 2001 rulemaking.*

Q 7: Are cities required to allow middle housing on small nonconforming lots of record?

A: *Cities must allow duplexes on every lot and parcel that allows for the development of a single family detached dwelling. For higher levels of middle housing, while the city must allow these housing types in zones that may have nonconforming lots of record, the city can still require that these housing types meet underlying siting standards such as minimum lot size, minimum lot width, building setback requirements, etc. to determine whether or not to approve a building permit.*

Q 8: Do we need to update comprehensive plan while updating regulatory changes to HB 2001? Does comp plan create consistency with regulatory changes to HB 2001?

A: *DLCD will not generally be reviewing amendments to local government comprehensive plans to respond to new state laws. The question of whether a city needs to update a comprehensive plan policy is different for each city. While it is advisable that cities go through the update process to conform to state law, the requirements, statutes, and Administrative Rules implementing HB 2001 take legal precedent over local government comprehensive plan policies. In a scenario where a local government has comprehensive plan policies that conflict with the purpose and intent of HB 2001, the rules found in OAR 660-046 will govern the allowance of middle housing.*

Q 9: When our city applies conditions to dwellings, it is normally through a Type II land division process. When regulating proposals on an existing lot, it is normally through a Type I process – site review, over the counter. Even with a more involved Type I process, a city is not able to write conditions. How we our city apply conditions and make the process for middle housing the same as single family detached?

A: *The intent of HB 2001 is to remove unreasonable cost and delay to the development of middle housing. Applying a more laborious or onerous review process to middle housing than is applied to single family dwellings, would be in conflict with that intent. Per OAR 660-046-0215, a city must apply the same approval process to middle housing as detached single family dwellings in the same zone.*

In relation to discretionary reviews for middle housing, ORS 197.307(4) requires that all residential development be reviewed under clear and objective standards. A city may also continue to provide a discretionary path option to applicants.

Q 10: Do the requirements of HB 2001 apply to a residential zone that allows middle housing types as permitted outright, but single family detached are conditionally allowed?

A: *Zoning districts that are primarily residential in nature should not require a conditional use permit for single family detached or any other housing type. Per ORS 197.307(4), all residential*

developments must be reviewed using clear and objective standards. In this scenario, it is advised that the city first determine whether to 1) allow single family detached in that zoning district outright via a clear and objective path in compliance with ORS 197.307(4) or 2) not allow single family detached all together. If the city chooses option 1, the city must also allow middle housing in that zoning district pursuant to Division 46.

If the zoning district in question is not primarily residential in nature, it is not subject to the requirements of HB 2001 or Division 46.

Q11: We are a Medium City that only needs to comply with the duplex provision, but we are planning to allow other Middle Housing types as well. Considering that statute allows us to only assume up to a 3% increase in capacity, what is the percentage for this scenario?

A: It's important to clarify that the three percent capacity assumption applies to all of the new measures adopted to increase the capacity of residential lands within a UGB, unless the jurisdiction provides a quantifiable validation that demonstrates a higher projected increase. In total, Middle Housing code amendments may result in up to a three percent increased capacity of lands within the UGB. In this particular case, the city may find that a three percent capacity assumption is not appropriate and may assume a higher rate as now allowed under ORS 197.296(6)(b)

Q12: Are cities permitted to completely prohibit a middle housing type within a specific geographic area, or is it just lot size and density? As a city prepares findings, should they prepare justification why they approached the performance metric?

A: The performance metric allows applying alternative minimum lot sizes and maximum densities than what is provided in Division 046. Because these standards are applied at the zoning district level, it is not a particularly useful tool in terms of designating specific geographies where Middle Housing is or is not permitted. Additionally, the performance metric approach requires that the city show that middle housing types allowances are equitably distributed within a Census Block Group. A city may be challenged to meet the criteria of the performance metric approach if the city were to selectively prohibit middle housing types from a specific location solely on the basis of its geography rather than the underlying minimum lot size or maximum density standards.

There is no additional rationale necessary to pursue the performance metric approach.

Q13: For building permits, can a jurisdiction continue to require additional application materials be submitted for housing types that include more than two units in a building?

A: It depends whether we are discussing materials needed for a building permit or to fulfill land use standards. A building permit, with associated application materials, is primarily intended to review site plans and structures for compliance with building and structural codes. If the building permit submittal requirements are used to review the development proposal beyond regulations specific to building code and include land use standards, that wouldn't necessarily protect the standard from legal challenge.

Participant Response: In regard to the question, are you wanting to use the building permit process to approve such things as landscaping? That is not a building permit standard. If it were something like sprinklers then that would be different.

Applicability in Mixed-Use Zones

Q 14: Does HB 2001 and Division 46 apply in Mixed-Use Zones?

A: *There are three criteria that need to be met for HB 2001 applicability: 1) Residential Comprehensive Plan Designation (this includes both residential comprehensive plan designations and mixed-use comprehensive plan designations as they are both commercial and residential), 2) Primarily Residential Zoning Districts (based on purpose and allowed uses), and 3) allows single-family detached as a permitted use. As an example where HB 2001 would apply is a low- or medium-density residential zoning district that implements a mixed-use comprehensive plan district.*

Q 15: If a city has a mixed-use district that lists existing single family detached houses as permitted but does not allow any new ones, is that a zone where development of single family detached homes is allowed? Does HB2001 apply to those districts?

A: *No. Though single family detached homes may be allowed as a legal nonconforming use, the department does not expect cities to allow middle housing as an outright permitted use in these zones unless they so choose. The allowance of middle housing in these particular zones would not be subject to the standards of Division 46.*

Subdivision vs. Master Planned Community

Q 16: How does a city adequately plan infrastructure in new subdivision areas where the subdivision does not meet the definition of a Master Planned Community as described in OAR 660-046-0020 and OAR 660-046-0205?

A: *This issue was considered as part of planning master planned communities, which allows middle housing types and provides jurisdictions with certainty for infrastructure planning (i.e., 15 units/acre or 20 units/acre within the Portland Metro region). While this doesn't apply to subdivisions, it at least provides guidance to cities on how to approach subdivision planning in relation to new middle housing allowances.*

At the subdivision stage, it is acceptable for a city to require a developer to identify the intended housing types for the purpose of infrastructure planning. It would be possible for a developer to apply for a building permit for a middle housing type after final plat, but the city retains the ability to require a demonstration that there is sufficient infrastructure to serve the proposed middle housing type. If there was not sufficient planned capacity from the subdivision process to accommodate the proposed middle housing type, the City retains the ability to require a developer to remedy the deficiency before issuing any building permits.

Q 17: Can members of DLCD speak on CC&Rs?

A: *HB 2001 rules did not address existing CC&Rs head-on. Rules prohibit future CC&Rs that prohibit the development of middle housing, but did nothing to alter CC&Rs retroactively. DLCD*

and the state are not a party to private CC&Rs (nor are local governments). It would be a monumental task for cities to understand where CC&Rs exist, what they prescribe, and whether they are actually enforceable through private legal action by a party to those CC&Rs. For these reasons, DLCD recommends that local governments not consider CC&Rs when formulating zoning code provisions for middle housing, or for any other type of development for that matter. It is an open question as to whether the Oregon Legislature has the authority under the state or federal constitutions to render existing CC&Rs unenforceable, much less for LCDC to take such action through an administrative rule.

Affordability

Q 18: HB 2001 requires cities to write findings explaining how they have considered increasing the affordability of housing. A construction excise tax indirectly supports affordable housing. For other measures, as well, cities should consider how they apply to middle housing as a broader consideration, but not just do that in context of middle housing. It's not a requirement to adopt a construction excise tax, just a requirement to start the conversation about what adopting one might mean and creates context for a deeper dive as part of the Housing Production Strategy. Is that correct?

A: *Correct, cities should be thinking of affordability in a much broader sense, especially as they gear up to have conversations regarding their Housing Production Strategy that will develop a more comprehensive local approach to affordability. There is available guidance in administrative rule, [OAR 660-008-0050](#), Exhibit B for cities to consider other approaches. DLCD encourages cities to be proactive in exploring these strategies.*

Q 19: How should a city prepare Middle Housing Affordability considerations and Goal 10 findings?

A: Middle Housing Affordability Considerations

[House Bill 2001](#) requires local governments to consider ways to increase the affordability of middle housing, including considerations related to SDCs, property tax exemptions, and construction taxes.

Sections 3, chapter 639, Oregon Laws 2019:

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and 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 (Definitions for ORS 307.515 to 307.523) to 307.523 (Time for filing application), 307.540 (Definitions for ORS 307.540 to 307.548) to 307.548 (Termination of exemption) or 307.651 (Definitions for ORS 307.651 to 307.687) to 307.687 (Review of denial of application) or property tax freezes under ORS 308.450 (Definitions for ORS 308.450 to 308.481) to 308.481 (Extending deadline for completion of rehabilitation project); and*

(c) Assessing a **construction tax** under ORS 320.192 (City or county ordinance or resolution to impose tax) and 320.195 (Deposit of revenues).

Please note that this is not a requirement to adopt these measures, but to consider them and directly address them within the findings. We advise that local governments use this opportunity to consider the myriad of policies that affect middle housing development. The policies outlined within the bill are specific to the subsidization of middle housing development and affordable housing generally. We also advise the consideration of other policies that affect the feasibility and affordability of housing options, such as the provision and finance of public facilities, incentives for regulated affordable housing development, incentives for the retention or conversion of existing affordable housing supply, and incentives and barriers within the development code.

Starting these conversations will be helpful for local jurisdictions as they embark on their housing production strategy, a new planning requirement for cities above 10,000 implemented by [House Bill 2003](#) (now [ORS 197.290](#)). This document will require cities to identify and develop an implementation schedule for strategies that promote the development of housing. Rulemaking for this new requirement included the compilation of a library of potential strategies local governments could consider as part of a housing production strategy. While this list is not exhaustive, it's a good place to start the conversation. You can access this document as an attachment on the Secretary of State webpage:

<<https://secure.sos.state.or.us/oard/view.action?ruleNumber=660-008-0050>>

Goal 10 Findings

ORS 197.175(2)(a) requires cities and counties to prepare, adopt, amend and revise comprehensive plans in compliance with Oregon's statewide land use planning goals, including Goal 10. In any plan amendment or adoption of land use regulations, cities and counties must address via findings how the proposed plan amendments affect compliance with each applicable goal.

In adopting land use regulations to comply with House Bill 2001, local jurisdictions will need to consider how these regulations will affect their compliance with Goal 10, including how it affects an adopted Buildable Lands Inventory (BLI) and Housing Needs Analysis (HNA), to ensure the sufficient availability of buildable lands to accommodate needed housing types identified in the HNA.

House Bill 2001 will enable to development of housing types where they were previously prohibited, increasing the capacity of lands to accommodate identified housing need. However, local jurisdictions will still need to consider how these regulations impact capacity in greater depth. ORS 197.296(6)(b), as amended by House Bill 2001, allows jurisdictions to assume up to a three percent increase in zoned capacity, unless they demonstrate a quantifiable validation that the anticipated capacity will be greater. In developing Goal 10 findings, we recommend that local jurisdictions apply this assumption to the adopted buildable lands inventory. Additionally, we recognize that adopted inventories may be dated and the true development capacity may not be known at the time of adoption. In these cases, we recommend that jurisdictions note that

they will further consider the impacts of middle housing ordinances on land capacity in the next Housing Needs Analysis, as required on a [regular schedule by House Bill 2003](#).

Goal Protections

Q 20: How does a city treat lands subject to natural hazards?

A: *Cities are allowed to limit density and occupancy in areas subject to natural hazards (e.g., 100-yr. floodplain, landslide hazards) that increases risk to people and property. Areas subject to natural hazards must be inventoried and mapped, and the city should demonstrate in findings that middle housing development in these areas pose risk to people or property.*

Q 21: Does Goal 7 (Areas Subject to Natural Hazards) protection mean a city can regulate middle housing in these areas differently than they regulate single-family detached housing?

A: *Yes. Cities can limit housing here if it poses a risk to life and property. This is fairly discretionary and requires a reasonable argument outlined in the findings, as discussed previously.*

Q 22: How should cities approach standards for development in the FEMA 100-year floodplain?

A: *OAR 660-046-0010(3)(c)(A) allows local jurisdictions to limit use, density, and occupancy in Special Flood Hazard Areas (i.e. the 100-year floodplain as defined by FEMA). This would allow for restrictions to middle housing within these areas to limit risk to people and property.*

Q 23: Does Goal 15 (Willamette Greenway) mean that the city can only apply goal 15 clear and objective standards? Will city need to update Goal 15 standards in local code in order to comply?

A: *This goal reveals an underlying conflict between statute and Goal 15, because Goal 15 outlines a discretionary review process applied to development adjacent to the Willamette Greenway, but ORS 197.307 prevents the application of such a review to housing. Areas around Goal 15 (Willamette Greenway) would be well-suited to middle housing, but DLCD understands there is a need for guidance on clear and objective standards which currently does not exist. DLCD hopes to have future guidance on the process using clear and objective standards. Staff recognize it would be unreasonable to fully update adopted Goal 15 code given its breadth and depth of scope in such a short time-frame. Therefore, it is not the Department's expectation that cities amend these codes as part of middle housing updates. However, the rule leaves the door open for jurisdictions to consider doing so in the future.*

Q 24: There are a few scenarios in our city where a discretionary permit review process comes into play. One such scenario is when an applicant requests a discretionary review process that is available to them and the other scenario is when development is proposed in a historic district. ORS 227.173 states that when using a discretionary review process the resulting decision has to be consistent with the Comprehensive Plan. How does the city reconcile findings showing that approval is consistent with the Comprehensive Plan when the Comprehensive Plan includes a specified density limit?

A: *Regarding discretionary review processes in Goal 5 Historic Resource Areas, ORS 197.307(4) exempts historic preservation standards from the clear and objective requirements. For historic districts or resources, cities can apply discretionary review processes to middle housing but a city*

cannot deny an application on the fact that the development is middle housing, especially based on standards related to use, occupancy, and density.

In terms of reconciling findings so they allow middle housing while also remaining consistent with Comprehensive Plan policies, state statutes, rules, and policies govern allowances for middle housing. Land use law typically favors the “particular overrides the general” arguments to determine which policies prevail in cases of conflict.

Q25: Our city has a historic district (**Goal 5**) that does not see townhouses as compatible, though 2/3/4-plexes designed with a SFR volume would be compatible. Can we not allow townhouses in a historic district but allow all other missing middle?

A: OAR 660-046-0010(3)(a)(B) disallows local jurisdictions from applying use, density, and occupancy restrictions that prohibit the development of Middle Housing while otherwise permitting the development of single-family detached dwellings in historic districts. A city would not be able prohibit a townhouse project in those areas solely on the basis of its housing type. However, cities are still permitted to apply historic design standards to townhouses, similar to any residential development in a historic district.

Participant Comment: What would be the difference between a quadplex developed to look like row houses, and four attached townhouses? I understand the city’s position, but a quadplex can look identical to townhouses, so it muddies the waters that we are going to have these different rules that have these housing types developed in a similar manner. Especially if the expedited land division bill (SB 458) allows the division of the quadplex, into essentially townhomes, after the fact.

Participant Comment: In your response to Goal 5 historic resources, if a city applies the performance metric approach, they technically CAN exclude middle housing from historic districts, correct?

Staff Response: *As discussed in another question, the performance metric approach allows cities to establish alternative minimum lot sizes and maximum density standards, but it does not enable them to specify a geographic area where Middle Housing is excluded. OAR 660-046-0010(3)(a)(B) states that “cities may not apply...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.” The OARs do not disallow cities from applying these standards, it only disallows cities from applying those standards that would functionally prohibit middle housing in those districts.*

Manufactured Dwellings as Middle Housing

Q 26: Can cities prohibit manufactured ADUs? What about manufactured dwellings for detached duplexes?

A: The relationship between manufactured dwellings and middle housing is still an open question. This is mostly because the statute for manufactured homes was written and adopted in a time where middle housing was not a consideration. In general, DLCD advice is to tread lightly

in this regard. It is okay to regulate the siting and design of manufactured ADUs, but we would recommend against prohibiting manufactured ADUs to limit the potential for legal challenge.

The same is true for detached duplexes; it is not yet clear whether manufactured homes must be permitted in a -plex configuration, provided that the development standards overall still allow for the development of manufactured homes per [ORS 197.314](#). DLCDC has not specified parameters around detached duplex regulations, as it is intended to provide jurisdictions options to increase flexibility of development, and the Department would not want to deter jurisdictions from this path. However, ORS 197.314 does not specify how many manufactured homes must be allowed on a lot (because this was previously assumed to be “one”). We recommend allowing manufactured configurations with appropriate siting and design regulations to prevent undesirable scenarios.

Q 27: If a city allows manufactured housing or prefabricated units as cottage clusters, when does an application change from being a cottage cluster to being a manufactured home park?

A: This distinction is unclear in statute at the moment. This is an example of inconsistencies in manufactured home statute because of the time the statute was written, which was decades in advance of middle housing statutes. It may be advisable to distinguish the two via some sort of partition or subdivision process that is unique to a manufactured dwelling park. Typically, manufactured homes in manufactured home parks have underlying land ownership models which could distinguish them as something other than middle housing.

ORS 446.055 provides an exemption for between four and six manufactured dwellings to be sited on a lot without meeting requirements applicable to manufactured home parks. This may be an option for local jurisdictions to consider in the context of manufactured cottage cluster siting.

Q 28: If manufactured dwelling parks were on their own lots that might be a trigger for cottage clusters. Can jurisdictions say that cottage clusters need to be on their own lot and a platted subdivision is required. Is this correct?

A: In that case, yes, but that may change if HB 2283 (2021) or similar legislation becomes law.

Parking/Access

Q 29: Through model code can a city require alley-loaded parking for townhouses in order to save on-street parking and minimize curb cuts?

A: Yes, there is an option in model code to provide alley-loaded parking for townhouses, but not a requirement. With OAR 660-046, a city cannot require any parking standard that isn't applied to single detached residence. So if a city requires alley-loaded parking for townhomes, it must also require alley-loaded parking for a single detached residence on the same lot or in the same district.

Q 30: Regarding driveway cuts, especially for duplexes/triplexes, a lot of access standards can be somewhat discretionary. For duplexes, can a city only limit one curb cut for a duplex (same as single-family detached)? OR, does there have to be one curb cut/unit for each duplex/triplex/quadplex?

A: For higher middle housing types, requiring access for each unit could be difficult to achieve and would be good to avoid. Another option would be to require combined driveways for two or more units, to limit curb cuts and retain on-street parking.

Q 31: Can cities require separate access to duplexes, or does it need to be shared between units?

A: The model code doesn't address this, but duplex standards can't be more restrictive than single family standards. The city could allow multiple driveways or separate access to duplexes but could not require it if they don't require multiple driveways for single family detached homes in the same zone.

Q 32: If there is already existing minimum spacing standards between driveways, would that apply to townhouses that need front access? That would mean that every townhouse in every development would not have its own driveway.

A: This creates a risk of appeal, because such a spacing standard could result in preclusion of townhouses, as they couldn't meet the same spacing standards that apply to a single-family dwelling. We would definitely steer cities away from this possibility, but that scenario could hypothetically happen, since not addressed directly by Division 046. One possible remedy is to apply driveway spacing standards but provide an exception to the standards to allow each lot at least one driveway. Another option would be to require combined driveways for two townhomes, to provide more spacing.

Q 33: Alternatively, there are three standards in large city model code for driveway access to townhouses. Could a city not permit the third, which is front-loaded driveways? Could model code be modularly adopted?

A: Yes, a city could pick parts of model code, and it could also be interspersed with Division 46 compliance. The Department recommends avoiding implementing standards that would be more restrictive than the Model Code, such as only permitting rear-loading alleys for townhouses (and precluding front-access townhouses) in an area where no alleys currently exist or could be designed as part of a larger land division.

Q 34: Some cities are looking at a standard whereby narrow lots will have to be alley-loaded due to driveway width standards which will make it harder to do townhouse development.

A: Some cities exempt development from driveway spacing requirements to ensure there is one driveway per lot. DLCD recommends cities do not adopt standards that would make development of middle housing more difficult. If a city required in the context of a larger subdivision the use of alley access, it would have to require such access for single detached unit development as well. These types of standards could open cities to legal challenges.

Q 35: A city may allow required parking on-street, but have more heartburn over the fact that if they require the space, allow it, and parking space goes away, housing becomes non-conforming. As a result, cities are stuck with the choice to not require parking or will not allow on-street parking in order to not have parking space attached to a house. What are your thoughts on that?

A: That is a good policy discussion on the local level. We would advise to include some provision in code written that specifying that the loss of on-street parking via a future action does not

make the dwelling unit non-conforming. This shifts the responsibility to the city to consider on-street parking as they do street improvements.

Q 36: Some jurisdictions actually require on-street parking in addition to off-street parking. They've been wondering whether they can apply those standards to middle housing.

A: The rules don't mention on-street parking except as a possibility for jurisdictions to allow in lieu of off-street parking. If standards are a per-unit standard, it probably would not be permissible. One per lot or development may be permissible as a frontage standard, but generally, DLCD would not recommend requiring it, because it precludes options for flexibility, such as a narrower street width.

Q 37: If we have to allow middle housing in the same manner as single family detached dwellings, what happens in an instances where single family detached was allowed with a hammerhead access aisle? Is allowing middle housing in that way okay, even if it will make it into a cul-de-sac?

A: It's not an absolute right to develop middle housing. There are still underlying standards, such as fire and emergency access, which have to be met before middle housing development is permitted. This would also hold true for detached homes being converted to duplexes.

Q 38: Can DLCD confirm that there is no exemption or special provisions in OAR 660-046 where a city could require additional off-street parking spaces for middle housing if there is no option for on-street parking?

A: Yes, confirmed. One thing to note here is that these standards limit the requirement of off-street parking, but don't limit the developer from providing more parking if they so choose.

Q 39: There's an OAR provision related to parking that applies to triplexes, quadplexes, and townhouses: "A Large City must apply the same off-street parking surfacing, dimensional, landscaping, access and circulation standards that apply to single-family detached dwellings in the same zone."

Does this include all driveway and access standards? Specifically, the approach grade standards. If a jurisdiction exempts single-family detached homes from certain approach grade requirements, do all triplexes/quadplexes and townhouses also need to be exempt? Or only middle housing that's created through conversion?

A: Yes, cities should apply the same approach grade standards to middle housing as they do for single-family detached. Similarly, if the city allows an exemption from these standards for single-family detached, the same exemption should be extended to middle housing. While, the rules do not explicitly address approach grade standards, staff finds it reasonable to assume that these standards are included in the OAR as part of "surfacing, dimensional, landscaping, access, and circulation standards".

Duplexes, Generally

Q 40: What's the difference between an ADU and a detached duplex? Does city or developer get to define those units?

A: *Division 46 provides a simple set of definitions for jurisdictions that establish the minimum necessary definitional characteristics (i.e. number of units on lot). The Division 46 definitions also give an additional set of options for cities to define these housing types differently. For example, the Division 46 definition of a duplex is that the units are attached. The rules also allow a city to define a duplex as either attached or detached. ADU allowances may create scenarios where there is little parity between that and a duplex. In a scenario where a property owner is proposing a development that can meet both the definition of a duplex and the definition of an ADU, DLCD recommends that the city allow the property owner to declare which property type it should be reviewed as.*

Q 41: In Figure 3 and 4 of model code, there are examples of detached duplexes, but still show figures with breezeways and garage in-between. Is that really the intent?

A: *Figure 3 of the Medium Cities Model Code shows a duplex attached by a side-by-side garage wall. Figure 4 of the Medium Cities Model Code shows a duplex attached by a breezeway. Both of these figures meet the definition of an attached duplex. Figure 5 of the Medium Cities Model Code shows a detached configuration of duplexes that is an option cities can opt into.*

Q 42: Are there any parameters for what is considered detached?

A: *No. The Model Code and OARs focus more on defining what is attached, rather than detached.*

Q 43: Our city's current code only allows for attached duplexes. Does that meet intent of HB 2001?

A: *Yes. The minimum acceptable definition of a duplex is that it is in an attached configuration. How the city would like to define "attached" is up to the city. The Model Code provides a few examples of attached duplexes but a city is not required to allow all of those attached duplex examples. A Medium Cities can choose to allow duplexes in a detached configuration.*

Townhouses, Generally

Q 44: Townhouses can only happen on every lot through a land division, which can be a barrier to middle housing. How does DLCD anticipate to address these barriers that may arise through land divisions in the future? *[Recording Time Stamp: 0:54:36]*

A: *Currently, there are two policy directions that could lead to an increase in ownership opportunities for middle housing: 1) requirements for local governments to allow land divisions of middle housing developments, and 2) condominium law reform for smaller projects. HB 2283 (2021) may be adopted in this legislative session, which requires local governments to allow land divisions for middle housing development. The definition of "townhomes" set forth in HB 2001 specifies that they are located on individual lots. A townhome-style development without a land division would be considered the equivalent of a "plex" development.*

Q 45: Requirement for frontage on a street would remain a barrier for fee-simple ownership for many middle housing types. Does the House Bill 2283 address that? *[Recording Time Stamp: 0:58:28]*

A: No, it does not. However, HB 2283 or similar legislation may address this issue.

Cottage Clusters, Generally

Q 46: In model code, the definition of cottage cluster states that a medium/large city may allow cottage cluster units to be located on a single lot/parcel or on individual lots/parcels. What does this mean for cities with how they allow for cottage clusters? Do they need to allow single lot or individual lot? Can it be one or the other?

A: Cities can do any of the following. 1) Require cottage clusters allowed on single lot (only) OR 2) cottage clusters allowed on individual lot (only), OR 3) allow both single lot and individual lot cottage clusters.

Q 47: What is the maximum number of cottages a city can regulate in a cluster?

A: There is nothing in OARs that prohibits a city from putting a maximum number of cottages in a cottage cluster. The middle housing rules in OAR don't speak to a maximum number of cottage cluster as a way to provide maximum flexibility for developers to provide as many cottages as a site could bear, within the bounds of reasonable building permit approval criteria such as stormwater mitigation, utility connections, and state building code.

Q 48: According to OARs it seems like jurisdictions can have one unit/lot or infinite units/lot, but nothing in-between is possible. It would be helpful for a jurisdiction to know if they can limit clusters on a site. At what point is too much before becoming a small unit subdivision?

A: The rule does not prohibit establishing an upper limit on the number of cottages on a lot. The requirement to allow at least eight units in a cluster means that there really is a floor to allow at least eight units within a cottage cluster, but a local jurisdiction may limit the upper threshold of how many units or clusters are allowed in a lot.

Q49: Is there anything that prohibits cities from allowing attached cottages? Allowing attached cottage clusters would be more permissive than the minimum standards in Division 46, so it seems like these would be allowed.

A: HB 2001 and Division 46 explicitly define a cottage cluster as a collection of detached cottages with smaller building footprints with a common courtyard. It is the only middle housing type that was defined with as much detail. The clear legislative intent is that these types of developments must be allowed. As the question suggests, a city may adopt standards that are more permissive than the rules. Under this logic, allowing attached cottage units is an acceptable outcome because it allows additional housing types and choices above and beyond what is allowed in Division 46.

However, an attached cottage development, on its face, does not meet the underlying definition of a cottage cluster in HB 2001 and Division 46 (i.e. building footprint is likely greater than 900 SF, are not detached). As such, DLCD encourages a city interested in allowing attached cottages to use a separate and unique definition for the housing type as to not conflate attached cottages with cottage clusters as defined in HB 2001 and Division 46.

Q50: We have developers possibly interested in large cottages - like 900 sf footprint but 3 story. There is precedent here for a project like this. I believe we can, but can you confirm whether there is anything in the rules that would preclude us from defining the size of a cottage to be smaller than that?

A: *Cities retain the ability to set the height and unit size restriction under OAR 660-046-0220. If the city were to define these larger units as a cottage cluster, they must apply a building footprint maximum of less than 900 SF, however. The city could also define these larger units as something entirely different than cottage clusters (see response to Q15 above).*

Audience Follow up Question: Is Washington County looking to not allow cottage clusters to have them on individual lots at the outset.

Participant Response: *We are starting by allowing them on one lot, but we may look at individual lots in the future.*

Q51: Is the HB 2001 “vision” for cottage cluster about having them on the same lot? Or is the vision really aimed at having them on their own lots (ultimately)? I appreciate the background – the “cottage cluster” to be defined as a detached development, whether it’s on its own lot or separate lots, but there are so many beautiful examples of cottage developments that don’t fit that. This may be related to “redefining density” and how they are rethinking density – I would like to know more on this.

A: *House Bill 2001 did not specify how the underlying lots are regulated, which is why the OARS are drafted to allow either lot divisions or one lot. With the potential passage of SB 458, which would allow middle housing lot divisions, it could be interpreted as a follow up to enable them to be on their own lot.*

Q52: Why would you have to have a separate set of provisions for attached cottages? Cities can be more permissive than the rules, so why can’t we just include attached as well as detached? Do we “have” to have separate provisions?

A: *First, see DLCD’s recommendation provided in Q49. Second, DLCD does not intend to find a city out of compliance with the Division 46 standards if they define cottage clusters as both attached and detached **unless** there is no clear and explicit path to approval for a cottage cluster that meets the letter of the definition in Division 46:*

OAR 660-046-0020(2): “Cottage Cluster” means a grouping of no fewer than four detached dwelling units per acre with a footprint of less than 900 square feet each that includes a common courtyard.

However, it should be noted that DLCD’s judgment on this issue, while having some legal value, does not guarantee that LUBA or Oregon’s appellate courts would uphold a local government code with more permissive cottage cluster code provision as conforming to OAR 660-046. Creation of a separate zoning category for “cottage cluster” units that, for example, exceed the 900 square foot footprint standard or include attached units would eliminate that legal uncertainty.

Siting and Design Standards for Middle Housing

Q 53: Can a main entry for each townhouse unit be required to face the street (a common requirement for other housing types) or would that be considered an alternative design standard?

A: *This type of design standards would be acceptable and wouldn't be considered an alternative design standard. The intent is to move from standards that scale by dwelling unit (which disproportionately impact a quadplex as compared to a single family detached dwelling), while still providing a path for jurisdictions that wanted to apply single family design standards to middle housing. DLCD recommends structuring design standards to focus on form, e.g. requiring main entryways that face the street for townhouses.*

Q 54: Can design standards ever be deemed to cause unreasonable cost or delay for middle housing?

A: *Division 46 doesn't define what unreasonable cost or delay is. It defines what it isn't. The standards that apply to single-family dwellings are generally much less restrictive than what is traditionally applied to middle housing types. If jurisdictions want to apply higher design standards to middle housing, their options include standards in the Model Code or standards that they demonstrate do not cause unreasonable cost or delay via the allowed Alternative Siting and Design Standards process established in OAR 660-046-0235.*

Q 55: For large cities, can duplex design standards fall under the provision of OAR 660-046-0225 "Large Cities Design Parameters" allowing the same parameters as other middle housing types?

A: *No. HB 2001 requires that a duplex be allowed on each lot or parcel that allows for the development of a single-family detached dwelling. Whichever standards a city applies to a detached single family dwelling represents the threshold that may be applied to a duplex in the same zone.*

Q 56: Cities cannot apply design standards to middle housing related to "Conversions." A city cannot apply design standards to middle housing that is converted from single family detached dwelling to middle housing. What about a triplex created by adding 2 detached units on a lot with an existing single family dwelling? Are those new units considered conversions of or additions to an existing single family dwelling to middle housing, and therefore, exempt from design standards?

A: *The provisions of OAR 660-046-0230 are primarily intended to provide incentives for the retention, rather than the demolition and replacement, of single-family detached dwellings in conjunction with middle housing. This policy is meant to preserve what is often called naturally-occurring affordable housing. If a property owner were to pursue converting or adding to an existing single family detached dwelling to create a middle housing structure, there may be instances where the existing structure will be out of compliance with middle housing siting and design standards – creating a non-conforming situation. This rule prohibits requiring those existing structures to conform to design standards. Additions to the existing structure, such as adding two detached units to the lot, would be subject to all applicable clear and objective design standards, so as to not increase the non-conformity of the lot beyond any non-conformity already created by the existing structure.*

Q 57: Cottage clusters created on a lot with an existing single-family dwelling - would cottage cluster development be exempt from design standards?

A: Additional cottage units added to a lot with an existing single-family detached dwelling would not be exempt from applicable design standards. The intent is to incentivize the retention of existing dwellings, and to allow the construction of cottages around that. Cities could apply design standards to the remainder of the cluster, including common space provisions.

Q 58: Could a standard require that each lot or parcel require an entry facing a street?

A: Yes, because this is a form-based approach, and not one that scales with the number of units on a lot, it is allowed.

Q 59: The siting and design standards in the model code and in OAR 660-046 are clear and objective standards. Alternatively, can a city provide a discretionary review path with additional siting or design standards?

A: Yes, there must be a clear-and-objective path to regulate middle housing. However, there can also be a discretionary alternative path provided for middle housing consistent with ORS 197.307(6), which allows the applicant a choice between clear and objective standards and discretionary standards.

Q 60: Our city requires a design review for single family detached homes. It appears that this may be in conflict with what is allowed in the Large Cities Model Code. If cities applied the same design review requirements to middle housing as were applied to single family detached, would they be in compliance?

A: As a reminder, the Large Cities Model code is but one way of regulating middle housing. The Large Cities Model Code is a specific selection of standards to regulate middle housing that falls within the range of acceptable reasonable siting/design standards that are established in OAR 660-046. Large Cities are not required to adopt the Model Code design standards or processes. It is offered as a recommended path/guidance and also as an enforcement tool for cities who do not comply with HB 2001 and OAR 660-046 by the June 30, 2022 deadline.

To directly answer the question posed above – yes, if a large city applies design review to single-family residences under siting and design criteria that are clear and objective then a city may apply the same standards to duplexes. A city has other options for applying design standards for other forms of middle housing that are set forth in the rules

Q 61: Our city is moving towards adding design review standards for all types of housing. Is this acceptable under HB 2001 and Division 46?

A: Yes. A city may adopt design standards for all types of housing, as long as those standards are clear and objective (in compliance with ORS 197.307). For middle housing, the city's design standards must comply with the adopted administrative rules in OAR 660-046. These rules generally require that duplexes be subject to the same standards as single-family detached dwellings, and that other forms of middle housing comply with the various standards set forth in the administrative rules.

Q 62: For higher middle housing types, there appear to be two different paths for applying siting and design standards: 1) apply standards as outlined in Division 46 or 2) apply alternative siting and design standards as long as the city can provide findings that those standards do not cause unreasonable cost

or delay. Our city allows alley access for single family detached. Can our city allow alley access for middle housing only through the Alternative Siting and Design process established in OAR 660-046-0235?

*A: For siting standards, the analysis of which standard caused unreasonable cost and delay was much more clear and straightforward than measuring the unreasonableness of a particular design standard. This is why the minimum compliance standards in Division 46 are much more defined for siting standards than they are for design standards. For siting standards, the minimum compliance standards clearly identify the range of reasonable middle housing standards (setbacks, building height, off-street parking, etc). In contrast, the minimum compliance standards do not outline specific reasonable design standards. Rather, Division 46 describes how “unreasonableness” is measured. Per OAR 660-046-0225, the city may apply design standards for middle housing (other than duplexes) in one of **four** ways: 1) apply design standards that are the same as the design standards in the Large Cities Model Code, 2) apply design standards that are less restrictive than the design standards in the Large Cities Model Code, 3) apply the same or less restrictive design standards the city applies to single family detached in the same zone, (note that these standards may not scale by the number of dwelling units. They may scale by form.) or 4) apply design standards approved through the Alternative Siting and Design Standards process as prescribed in OAR 660-046-0235.*

In the scenario described in this question, because the city allows access from an alley for single family detached homes, the city may also allow alley access for middle housing. The city would not need to provide findings through the Alternative Siting and Design Standards process because the standard in question is not more restrictive than what is applied to single family detached dwellings.

Q 63: What options do cities have to differentiate development standards for cottage clusters in different zoning districts? How can a city create parity in development types in say higher density zones versus lower density zones?

A: The options for parity between zones are somewhat limited for cottage clusters. One option is to allow a greater minimum number of cottages in a cottage cluster. OAR 660-046-0205(4)(d) allows a Large City to establish a minimum number of cottages in a cottage cluster at either three, four, or five. Other options include allowing more cottages around any single common courtyard, incentivizing smaller cottage units in higher density zones, or reducing off-street parking requirements in areas near transit.

Additionally, a Large City may want to reconsider whether or not to allow single family detached homes in their higher density zones as that development type may not be congruent with the underlying intent of a high density zoning district. As a reminder, HB 2001 and OAR 660-046 only apply to zoning districts that are zoned for residential use and allow for the development of single family detached. If a high density zoning district does not allow single family detached then any standards a city applies to cottage clusters allowed in that zoning would not be subject to compliance with OAR 660-046.

Q 64: Can our city apply a minimum lot width standard for middle housing that is larger than the current minimum lot width standard for single family detached dwellings in the same zone?

A: *The minimum compliance standards in OAR 660-046 contemplate the allowance of middle housing on lots of a particular square footage. The minimum compliance standards only consider minimum lot width in relation to cottage clusters because the development type does not lend itself to multistory construction. The department recommends cities do not require greater minimum lot widths for middle housing than what is required for single family detached in the same zone. However, a city may pursue applying a different minimum lot width standard through the OAR 660-046-0235 Alternative Siting and Design Standards process.*

Q 65: Can the department provide additional clarity on which standards are considered siting and design standards? For example, site access standards and solar setbacks and access standards.

A: *Per OAR 660-046-0020:*

“Siting Standard” means a standard related to the position, bulk, scale, or form of a structure or a standard that makes land suitable for development. Siting standards include, but are not limited to, standards that regulate perimeter setbacks, dimensions, bulk, scale, coverage, minimum and maximum parking requirements, utilities, and public facilities.”

“Design Standard means a standard related to the arrangement, orientation, materials, appearance, articulation, or aesthetic of features on a dwelling unit or accessory elements on a site. Design standards include, but are not limited to, standards that regulate entry and dwelling orientation, façade materials and appearance, window coverage, driveways, parking configuration, pedestrian access, screening, landscaping, and private, open, shared, community, or courtyard spaces.”

Under these definitions, both site access standards and solar access and setback standards would qualify as siting standards. However, Division 46 does not consider these two standards in the list of middle housing siting standards in OAR 660-046-0225. If a city applies these standards to single family detached homes, they may also apply these same or less restrictive standards to middle housing in the same zone. If a city were interested in applying siting standards such as these to only middle housing, the city must present findings in accordance with OAR 660-046-0235, Alternative Siting and Design Standards, to show that they do not cause unreasonable cost and delay to the development of middle housing and that the standards achieve and advance a public need or interest proportional to the cumulative cost and delay imposed.

Q 66: Can standards a city currently applies to single-family detached homes be considered “unreasonable”? Can these standards also be applied to middle housing?

A: *Standards currently applied to single family detached homes are not inherently unreasonable as long as they are clear and objective in compliance with ORS 197.307(4). For the purposes of applying standards to middle housing, the “unreasonableness” of a particular standard is the difference in cost and delay incurred by middle housing as compared to the cost and delay incurred by single family detached homes in the same zone.*

For example, a 50’ rear yard standard on small, infill lots may not particularly incentivize the development of any type of residential development (single family detached, middle housing, or

otherwise). But if the city applies that same standard across all housing types in the same zone, the standard is no more “unreasonable” for middle housing than it is for single family detached.

It should also be noted that ORS 197.304(4)(b) states that cities apply standards that do not have the effect, either in themselves or cumulatively, of discouraging **needed housing** through unreasonable cost or delay. So it is possible that even in the scenario outlined above, a property owner could challenge the city’s 50’ rear yard setback as unreasonable for all needed housing, not just for middle housing.

Sufficient Infrastructure

Q 67: When planning for infrastructure at-large, can we assume a 3% increase for housing and infrastructure for both medium and large cities?

A: Yes, for any measure to increase residential capacity in the UGB, you can assume up to a 3% increase in housing. It is okay to use this same assumption for infrastructure planning.

Q 68: What are DLCD’s thoughts on sufficient infrastructure language around middle housing other than duplexes? May be onerous for individual property owners to be required to provide these analyses.

A: Infrastructure was a big consideration during rulemaking. Ultimately, the rules are structured such that cities treat middle housing similar to other forms of development in terms of ensuring infrastructure is available, or can be made available, to serve its demand. Just like any other type of urban development, cities should work with developers of proposed middle housing to remedy infrastructure constraints as they arise. The rules do not however, allow cities to categorically remove infrastructure-constrained lands from the middle housing allowances (unless through the IBTER process prescribed in OAR 660-046-0300). The city may require developers of middle housing to provide reasonable and proportionate mitigation of localized infrastructure constraints like is required for any other development proposal.

Q 69: A city must plan infrastructure capacity to accommodate densities at 15 (outside of Portland Metro) and 20 (inside of Portland Metro) units/acre in new master planned communities. Can conditions of approval that limit density run afoul of rules, and do you have any advice of how consultants can approach this problem?

A: Before the subdivision stage for master planned communities, cities have to have discuss this issue with developers. Once lots are platted, there is possibility for a developer to increase density, but city can still retain the right to only plan for smaller infrastructure capacity if a higher density triggers an infrastructure constraint.

Q 70: According to model code, how do cities both review sufficient infrastructure, but yet not review and not require review of any applicant? How is an individual property owner supposed to evaluate the infrastructure capacity?

A: There is a process that can happen from subdivision > building permit stage. It is great for developers to specify what type of housing they will be developing, understanding it is not binding.

Analysis of sufficient infrastructure is inherent in that review process, which often involves local government engineers and public works departments. The calculation for differential in capacity is still there. We are not adding additional processes, but reinforcing already-embedded processes.

Q 71: How do we square our system development funding methodologies with the capacity assumptions we're being required to make? How do we make sure we don't overcharge/undercharge and ensure we can deliver the infrastructure system?

A: This would have to be a conversation between developer, city, and subdivider/future builder to better understand what types of development will actually be built in the initial phase. Future planning and increased capacity need to accommodate demand is also an important part of this conversation.

Q 72: How about establishing future SDC rates for future infrastructure? Would you divide the cost between # of units you realistically anticipate to show up, or an ambitious # of units you hope develops in the future?

A: A per-unit basis for SDCs encourages infrastructure-inefficient and less affordable land uses. Density increasingly does not correlate with actual intensity of infrastructure usage. In the long-term, the state may need to re-think how local governments approach SDCs, and public facilities financing for housing, which will require consideration of applicable rules/statutes for SDC collection. In the short-term, DLCD encourages local governments to consider charging differential SDCs for different types and sizes of dwelling units depending upon the relative impacts of such units upon public facilities systems (such as through the findings and analyses of these issues required by HB 2001). However, DLCD recognizes that the intent of HB 2001 was not to require jurisdictions to change SDC calculations.

Middle housing development will complicate the collection and use of SDCs. SDCs are used to pay for larger city-wide or area improvements to transportation, water, sewer, storm drainage, and parks facilities. Provision of additional dwelling units beyond the traditional "one unit per lot" calculation will increase the need and cost of many such facilities. However, the city will also be collecting additional SDCs from the additional units beyond what was initially expected. Local governments will need to sort out these complications in their planning for public facilities.

The rulemaking process concluded with adoption of rules for master planned communities, but with request of staff by commission to do a study if 15 or 20 units/acre are the right numbers by December, 2021. This study will inform the appropriate thresholds for master planned communities and may inform future approaches to public facilities financing.

Q 73: Are exemptions to public works standards granted to single family homes that may not also be granted to middle housing.

A: The rules require those same exemptions to be granted to duplex development, but not for higher level middle housing.

Non-Conforming Lots of Record

Q 74: Regarding whether cities are required to allow Middle Housing on small non-conforming lots of records. Certainly duplexes must be allowed on these lots, but are cities required to allow higher middle housing types on non-conforming lots of record that do not meet the minimum lot size requirements for the housing type?

A: There is not an expectation that cities permit higher level middle housing on non-conforming lots of record especially those that do not meet the underlying minimum lot size requirements.

Q 75: Further clarifying - can a city prohibit certain higher middle housing types based on the lot size, or that it wouldn't be allowed on certain sized lots based on the siting standards?

A: Lot size is a siting standard under OAR 660-046-0220. The standard in OAR allows a city to establish certain minimum lot size requirements for higher level middle housing. If a property owner proposes a triplex on a small nonconforming lot of record that does not achieve the minimum lot size requirement for triplexes in the zone, the rules would allow the city to be expected to permit the development require that a lot be of a certain size before so the answer would be 'yes' to both.

Q 76: I'd like to ask a follow up question to this question and response: Q 28: Do the requirements of HB 2001 apply to a residential zone that allows middle housing types as permitted outright, but single family detached are conditionally allowed? A: Zoning districts that are primarily residential in nature should not require a conditional use permit for single family detached or any other housing type. Per ORS 197.307(4), all residential developments must be reviewed using clear and objective standards. In this scenario, it is advised that the city first determine whether to 1) allow single family detached in that zoning district outright via a clear and objective path in compliance with ORS 197.307(4) or 2) not allow single family detached all together.

If the city chooses option 1, the city must also allow middle housing in that zoning district pursuant to Division 46. If the zoning district in question is not primarily residential in nature, it is not subject to the requirements of HB 2001 or Division 46.

A: Correct. ORS 197.307 was amended such that clear and objective requirements apply more broadly to "housing", rather than just "needed housing". DLCD is working through the specific interpretation considerations, including zones that allow less desirable use types through a non-clear and objective process (e.g. single family in a high density zone).

Gentrification/Displacement

Q 77: One of the issues the city has run into is whether Middle Housing allowances lead to displacement in lower-income neighborhoods. Does DLCD staff have guidance to offer on this issue? The effect of adding more housing supply offsets local displacement, but what about situations where the areas where middle housing is functionally allowed are predominately lower income, because higher-income areas have existing CC&Rs that preclude redevelopment.

A: This was a significant conversation during the rulemaking process, specifically the "in areas" conversation. Ultimately, the rulemaking process did not go the route of exempting areas from middle housing over fears of displacement. The rationale is that by allowing middle housing in all areas, the associated benefit of increased housing supply offsets the potential displacement risk.

Additionally, gentrification and displacement must be addressed as part of comprehensive long-term strategies identified in the housing production strategy (HPS). The department is currently preparing two case studies and a toolkit on gentrification and anti-displacement to provide guidance for cities on how to consider gentrification and displacement in light of an HPS. This guidance will be available in late summer 2021.

Middle Housing Conversions

Q78: Per OAR 660-046-0225(2), cities cannot apply design standards to middle housing created through conversion of existing SFDs. However, if an overlay zone's existing design standards apply even to single-family remodels would it be ok to apply the design standards to middle housing conversions under the existing remodel language?

A: The intent of OAR 660-046-0225(2) is to incentivize the retention and conversion of existing housing over demolition and redevelopment. OAR 660-046-0230 requires cities to allow additions to or conversions of existing single-family dwellings into Middle Housing, provided that it does not increase nonconformance with applicable clear and objective standards (unless otherwise allowed by the City's code). Therefore, a City would be permitted to apply design standards to the portion of a conversion that would increase nonconformance with applicable design standards (e.g. new building façade, entrances, etc.), but not the portions that would not increase nonconformance (e.g. existing façade, entrances, etc.).

Q79: On the conversion of a single-family detached dwelling to Middle Housing – is there a difference between duplexes and tri- or quadplexes?

A: Similar to tri- and quadplexes, duplex conversions must be allowed if the conversion does not increase nonconformance with applicable clear and objective standards. Duplexes do not have the same restriction on design standards applied to conversions outlined in OAR 660-046-0225(2), so cities may apply the same design standards to a duplex conversion that would apply to a single-family detached conversion or remodel.

Q80: Regarding middle housing conversion standards in OAR 660-46-0230(1), can a city prohibit the conversion of a single family detached home to middle housing (triplexes and quads) if the subject lot doesn't meet the minimum lot size?

A: Yes. Conversions of single family detached homes to middle housing should not increase the nonconformity of the development to current code standards. Cities cannot require a conversion of a single family detached homes to middle housing comply with specific design standards.

SB 458

Senate Bill 458 requires cities to allow lot divisions for Middle Housing. This bill has passed and has been signed by the Governor.

- The bill requires cities to allow middle housing lot divisions for any HB 2001 middle housing type built in accordance with ORS 197.758. A city must allow middle housing lot divisions to be permitted on or after June 30, 2022.
- A tentative plan for a middle housing division must include certain things including:

- Separate utilities
 - Easements necessary for utilities, pedestrian access, common use areas or shared building elements, dedicated driveways/parking, and dedicated common area
 - One dwelling unit per each resulting lot or parcel (except common areas)
 - Demonstration that the buildings will meet structural code
- Cities retain the ability to require or condition certain things, including further division limitations, street frontage improvements, right-of-way dedication (if original parcel did not). They *may not* require driveway, vehicle access, parking, or min/max street frontage for each lot, or things inconsistent with HB 2001 (including Division 046). Nothing in SB 458 prohibits cities from requiring final plat approval of the lots before approving building permits.

Q81: If a jurisdiction wants to incorporate lot division standards now, we would be more lenient than state law in that regard. I am assuming that is okay, but I want to know how that coincides with the department's position with regard to attached cottage clusters.

A: *A local jurisdiction may incorporate lot division standards for Middle Housing before June 30, 2022. On attached cottage clusters - the department will not object if you have a more lenient position than what is provided in state law, but in speaking with the DOJ, the cottage cluster provisions have two elements that are specified in the definition in statute – that the units are detached and that the building footprints are less than 900 square feet. A city opens themselves to legal ambiguity and challenge adopting a different definition for cottage clusters, which would be easily solved if they had a second category that allowed attached cottage cluster configurations (e.g. “cluster housing”).*

Q82: On the timing of SB 458 – if it applies to housing built after June 30, 2022 – Does that mean that cities implementing code should incorporate these standards before the deadline?

A: *An important point of clarification - SB 458 and the expedited land division process only applies to middle housing lot division that are permitted on or after June 30, 2022. The bill does not specify if the middle housing development must be permitted on or after June 30, 2022.*

On planning assistance – DLCD will consider jurisdictions that want to incorporate middle housing lot divisions as part of their planning assistance request. However, DLCD's top priority will be funding projects that complete code amendments required to comply with House Bill 2001 (ORS 197.758) and OAR Chapter 660, Division 046.

Q83: On SB 458, you mentioned requiring street frontage improvements. We are trying to figure this out for both HB 2001 and this new type of subdivision. If we have to go to a Type I for approval of these, we don't have the ability to do anything discretionary.

A: *The public works standards, middle housing, and middle housing land divisions intersection will be one that will take some time to think through. SB 458 is fairly prescriptive as to the process by which Middle Housing lot division may happen via the expedited land division process. Please see the guidance document DLCD has prepared and attached to this document for more details on this topic.*

Q84: Do land divisions required in SB 458 impact the definitions of Middle Housing types, specifically between plexes (i.e. multiple units on one lot or parcel) and townhouses (i.e. attached units on individual lots or parcels).

A: SB 458 does not inherently change the definitions of Division 046. Section 2(5) of SB 458 specifies: “The type of middle housing developed on the original parcel is not altered by a middle housing land division.”

Participant Comment: The definitions in Division 046 do change though, since the definition of a quadplex for example is “four units on a single lot or parcel,” and that won’t be true after the middle housing land division.

LOC: To provide LOC perspective - the intent on definitions is that a developer will have choice on how to move forward with what type of middle housing development they apply for. If you are applying for a fourplex with four lots, that is what it will be when you apply for a land division and you will have ability to denote this in the record (i.e. those lots cannot cascade into more lot divisions).

Q85: Does SB 458 apply to townhomes?

A: SB 458 applies to all Middle Housing types allowed under ORS 197.758 (2) and (3). This includes townhouses. However, this may be moot as townhouses need to undergo the lot division process as part of the development review process.

Participant Comment: However, if a developer chooses to call a townhouse development a plex with a middle housing land division to avoid minimum lot width requirements etc.

Staff Response: SB 458 expressly prohibits the application of minimum street frontage requirements as part of the land division process. Planners will need to think carefully about the underlying economic incentives at play. Please see the guidance document DLCD has prepared and attached to this document for more details on this topic.

Q86: It would be good for DLCD to think through more the idea that SB 458 applies to townhouses. There are some big implications - again particularly for frontage improvements. With SB 458, every plex will become townhouses, but without the broader land division requirements.

A: Please see the guidance document DLCD has prepared and attached to this document for more details on this topic.

Participant Comment: It’s also interesting to think through whether SB 458 incentivizes side-by-side plexes, leading to multistory construction, with implications for accessibility.

Q87: SB 458 seems to require cities to process Middle Housing lot divisions through the Expedited Land Division process in ORS 197.360. Will guidance be provided on this?

A: Please see the guidance document DLCD has prepared and attached to this document for more details on this topic.

Q88: Some cities want to provide an option for some units to be divided, which is possible under a standard division, but not under an SB 458 land division.

A: It is correct that SB 458 requires each unit to be on its own lot, though it may be possible for a jurisdiction to establish an alternative path that allows the lot division configuration described, provided that an SB 458 lot division pathway is available.

Q89: On SB 458, and the overlap between detached duplexes and single-family dwellings with a detached ADU. If someone has one, can they call it a duplex and put it on a separate lot.

A: *If something was approved in the City's records as an ADU, SB 458 would not apply as it only applies to Middle Housing as defined in ORS 197.758 and OAR 660-046.*

Q90: On the notion of city's adopting middle housing lot divisions for existing middle housing. The way I understand it is we would have to create a different process to do this, because the expedited land division process comes with some protections.

A: *This appears to be the case – previously existing developments wouldn't necessarily qualify under SB 458 and any potential lot division of that development would not be entitled to the expedited land division process. It may be possible for an existing Middle Housing development to demonstrate substantial compliance with HB 2001, which would qualify it for a lot division under SB 458, but this would be an unlikely scenario.*

Q91: Regarding SB 458, the bill limits conditions of approval for a land division. How can a jurisdiction condition and require street frontage improvements? Can they withhold final plat? Occupancy? Logistically, how do you see that working?

****As a reminder, DLCD's SB 458 guidance was sent out the week prior to this meeting. Feel free to reach out if you haven't received it. It is also posted on the DLCD HB 2001 webpage.****

A: *The street frontage timing scheme is still being figured out. DLCD has included a more detailed analysis of the street frontage aspect of SB 458 and for middle housing allowances as an attachment to this written response document.*

In short, the options for land division platting can happen both before, at the same time, or after building permits. Nothing in SB 458 prohibits final plat before building permits are approved. Each city can determine how to structure the timing to make the most sense for their process.

Q92: Does an applicant need to build a middle housing type before it is eligible for a land division under SB 458?

A: *No. The middle housing land division process can also take place concurrent to, or before, building permit approval.*

Q93: There is a requirement that we apply the same procedural process for middle housing as we do for single family detached. When someone proposes to create a lot for a single-family detached development the land division is completed as part of the platting process. Under the requirements in OAR, someone who proposes to build middle housing on a lot will be reviewed through the single family detached requirements (i.e., plan check). But the single family detached plan check process doesn't line up with multi-family development. Has there been any further thought on this process? Can someone go back for a land division on lot that created a single family detached house?

A: *SB 458 only applies to land divisions that will create lots for middle housing development. It does not apply to single family detached related land divisions. Also, the process of reviewing the middle housing development proposal is separate and distinct from reviewing an application for a middle housing land division. It is correct to state that if no land division is proposed, a city is*

required to apply the same zoning and planning review process to both single family detached and middle housing, whether plan check or otherwise.

If a property owner proposes to divide a parent parcel to prepare for middle housing development, the city must use the expedited land division process to review the land division proposal. Still, the planning and zoning review of the actual development must be the same process applied to single family detached. SB 458 allows a local government to require final platting before approving building permits.

Q94: To do frontage improvements, the city needs to apply a Type I or II process. You can't just do it with a building permit. Also, for middle housing, treating middle housing the same as single-family might prohibit the planning process because there is none yet.

A: *The infrastructure guidance provided as an attachment to this document responds to this question in part.*

Cities that offer public works exemptions to single-family detached developments are required to offer those same exemptions to duplexes. For other middle housing types developed in a non-land division scenario, the city can require that the applicant provide or ensure that there exists "sufficient infrastructure" to support the development. DLCD encourages cities to provide the same public works exemptions offered to infill single-family detached development to infill middle housing development especially if those exemptions are based on factors such as infrastructure impact, square footage, project valuation, rather than the number of units on a lot.

If the city requires single-family detached developments to provide frontage improvements in a non-land division scenario, the city is free to utilize this same process for middle housing developments.

If an applicant were proposing a middle housing land division, the city could require street frontage improvements as allowed in SB 458.

Q95: Is there a way to incorporate an early assistance/pre-application process to work with applicant for middle housing, prior to building permits coming in?

A: *Yes, DLCD would encourage this, especially if requiring frontage improvements.*

Q96: In SB 458, does the term "original lot or parcel" refer to the lot or parcel that is being proposed to be divided as a middle housing land division? We ask because the wording of the bill is unclear as to whether the resultant lots or parcels create increases in nonconformity with the original approval. We are trying to determine whether it is necessary to create clear distinctions between the "original" lot and the resultant middle housing lots.

A: *The term does refer to the lot proposed to be divided for a middle housing land division, not the resultant lots. We agree that the wording of the bill creates a challenge in terms of the distinction between the "original" and "resultant" lots or parcels. Certainly, the middle housing lot division would create nonconformities with standards such as minimum lot size, setbacks, and lot coverage, as they cannot be applied as approval criteria under SB 458. However, we think there are a few approaches a local jurisdiction could consider to make this relationship clearer and avoid inconsistencies, including specifying "parent/original" and "child/resultant" lots or through notation of SB 458 lot divisions in the final plat.*

Q97: How many jurisdictions are considering amending their codes to incorporate SB 458 versus just referencing the amended ORS? We debated whether to include a reference, but through discussion, we think it would be better to incorporate it into the code.

Chat Discussion: *Washington County and Eugene will incorporate SB 458 into their lot division code.*

Chat Discussion: *Are any other local governments talking to the county surveyors about what these plats will look like (i.e. parcel naming, etc)? [There were no specific responses to this question]*

Q98: Senate Bill 458 lists two conditions of approval that cities may add as conditions of approval, including prohibiting further division of resulting lots and requiring notation on the final plat. Are those the only conditions of approval that cities can apply, or are other conditions allowable as long as they don't violate other aspects of SB 458?

A: *Cities are permitted to apply conditions of approval to satisfy approval criteria related to the SB 458 land division but would not be permitted to functionally apply approval criteria not permitted under SB 458.*

Follow-up: *If State law or County survey rules prohibit placing administrative notation on final plat, what are options for implementing SB 458 condition related to notation on final plat?*

A: *Notation of a SB 458 land division is an option, not a requirement.*

Q99: If we allow shared laterals for duplexes, does SB 458 allow us to require separate laterals?

A: *Yes, the bill requires separate utilities for each lot to be eligible for a middle housing land division.*

Q100: On the frontage improvement question, we've begun getting questions from developers.

A: *DLCD has published guidance on the confluence of middle housing, SB 458, and frontage improvements in conjunction with the July 2021 Open Forum written responses. Cities that have specific questions not addressed in that guidance should reach out their Regional Representative or DLCD Housing staff.*