

HB 2001 and HB 2003 Frequently Asked Questions

Updated on March 25, 2020

House Bill 2001

Requirements for Duplexes

Which jurisdictions will be required to allow duplexes?

All Oregon cities with a population of 10,000 or more, unincorporated areas within the Portland Metro boundary that are served by sufficient urban services, and all cities within the Portland Metro boundary with a population of more than 1,000. A list is here: https://www.oregon.gov/lcd/UP/Documents/2019-11-20_CityList_HB2001_HB2003.pdf

Where will they be allowed?

Duplexes must be allowed “on each lot or parcel zoned for residential use that allows for the development of detached single family dwellings.”

What is meant by “a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings”?

A local government that allows single-family dwellings in a residentially zoned lot or parcel must also allow for the development of a duplex. The local government may regulate the siting and design of the duplex so long as the regulations do not, individually or cumulatively, deter the development of duplexes through unreasonable cost and delay. More definitive guidance on this phrase will be provided with the adoption of administrative rules by the Land Conservation and Development Commission.

How will these requirements affect the development standards in my city/county?

Currently, the Department of Land Conservation and Development is only developing rules for duplex requirements. Once administrative rules are adopted, cities outside Portland Metro with populations between 10,000 and 25,000 (referred to as “Medium Cities”) will be required to adopt compliant development codes by June 30, 2021. Final guidance will be provided with the adoption of administrative rules.

What happens if a jurisdiction does not adopt a compliant development code by the statutory deadline?

If a jurisdiction does not adopt a compliant development code by the statutory deadline, a model ordinance adopted by the Land Conservation and Development Commission (LCDC) will apply directly and will pre-empt any existing local standards regulating duplex development. This model ordinance is under development and expected to be adopted by LCDC by August 2020.

Requirements for other middle housing types

Which jurisdictions will be required to permit other middle housing types (i.e. triplexes, quadplexes, townhouses, and cottage clusters)?

All Oregon cities with a population of more than 25,000, unincorporated areas within the Portland Metro boundary that are served by sufficient urban services, and all cities within the Portland Metro boundary with a population of more than 1,000 (referred to as “Large Cities”). A list of these jurisdictions is here: <

https://www.oregon.gov/lcd/UP/Documents/2019-11-20_CityList_HB2001_HB2003.pdf>

Where will they be permitted?

Middle housing types listed in HB 2001 other than duplexes must be allowed “in areas zoned for residential use that allow for the development of detached single family dwellings.”

What is meant by “in areas zoned for residential use that allow for the development of detached single-family dwellings”?

The Department of Land Conservation and Development has only just begun developing rules for “Large City” middle housing requirements. The exact interpretation of “in areas” is pending development through rulemaking. More definitive guidance on this phrase will be provided with the adoption of administrative rules.

What is meant by “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”?

The intent of HB 2001 is make the development of middle housing types equally as feasible as single-family dwellings. As such, standards, approval criteria, or processes that impose additional burden on the development of middle housing types above the burden placed upon single family dwellings in the same zone are considered unreasonable - and therefore not in compliance with the intent of HB 2001.

How will local governments know their regulations would not be determined to result in “unreasonable cost or delay”?

The administrative rules and model code adopted through this rulemaking process by the Land Conservation and Development Commission will provide a set of development standards that are considered to be reasonable. Additionally, the rules will define certain parameters for development regulations which will provide jurisdictions with clear guidance as to what is considered unreasonable cost or delay. More definitive guidance on this phrase will be provided with the adoption of administrative rules.

How will these requirements affect development standards related to:

Density

Dimensional Standards (e.g. setbacks, lot coverage, height)

Design and Solar Access

Infrastructure and Public Facilities

Parking

The Department of Land Conservation and Development has only just begun developing rules for “Large City” middle housing requirements. Once administrative rules are adopted, these cities will be required to adopt a development code compliant with the

HB 2001 law and rules by June 30, 2022. More definitive guidance on how the bill will affect development standards for large cities will be provided with the adoption of administrative rules.

What happens if a jurisdiction does not adopt a compliant development code by the statutory deadline?

If a jurisdiction does not adopt a compliant development code by the statutory deadline, a model ordinance adopted by the Land Conservation and Development Commission (LCDC) will apply directly and will pre-empt any existing local standards regulating duplex development. This model ordinance is under development and expected to be adopted by LCDC by mid-November of 2020.

Infrastructure-Based Time Extension Request (IBTER)

What if infrastructure is unable to accommodate middle housing types?

A local government may request an extension of time to enact the required regulations based on an application identifying an infrastructure constraint (water, sewer, storm drainage, or transportation) to accommodating middle housing development in a specific geographic area. In order for this extension request to be approved by the Department, the local government must also provide a plan of actions to remedy the infrastructure deficiency.

When must an Infrastructure-Based Time Extension Request be submitted?

A “Medium City” must submit an extension request by December 31, 2020. A “Large City” must submit an extension request by June 30, 2021.

What is considered “significantly deficient” infrastructure?

HB 2001 states that local governments may request an infrastructure-based time extension if infrastructure is currently significantly deficient, or is expected to be by December 31, 2023. Of course, the level of deficiency is dependent upon the infrastructure system. The Rulemaking Advisory Committee and the DLCD project team are working with technical experts to determine this criteria. The exact interpretation of this section of the bill is currently under development in rulemaking. More definitive guidance on this phrase will be provided with the adoption of administrative rules.

How much development/redevelopment can be anticipated or assumed for an extension request?

HB 2001 provides at least some guidance as to how much redevelopment a jurisdiction could reasonably anticipate as a result of adopting middle housing development standards. The bill states that a local government may not assume an increase in residential capacity above achieved density by more than 3% for the purposes of accommodating needed housing over a 20-year planning period. For the purposes of calculating if existing infrastructure can accommodate this growth by December 31, 2023, draft administrative rules currently under development have simplified this redevelopment rate to a growth rate of 1% in infill development situations and 3% in greenfield development situations.

How long of an extension can be granted?

A local government is expected to make good faith action to remedy an infrastructure deficiency in a timely manner. The proposed length of the initial time extension is five years, with the opportunity for a one-time additional five year extension.

How does a jurisdiction prepare an IBTER for an area where they do not have ownership or authority over a type of infrastructure such as a State highway or service provider district?

Parameters for ensuring coordination between local governments and service providers is currently in development as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

Requirements for Accessory Dwelling Units (ADUs)

How will HB 2001 change how ADUs are regulated?

The new law prohibits jurisdictions from requiring owner-occupancy or off-street parking for ADUs. However, such regulations may be applied if the ADU is used for vacation occupancy.

What is the difference between an ADU and a duplex?

There may be rare situations where a proposed development could meet the definition of both a duplex and a single-family dwelling with an internal ADU. In these situations, the property owner will be allowed to elect which definition they wish to apply to their proposed development. The property owner is not allowed to define their proposed development as both or change their election.

Will HB 2001 require jurisdictions to allow both an ADU and duplex on a single lot?

We are currently exploring this legal question as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

General Questions

What is the Model Code? How will it be applied?

If a jurisdiction does not adopt a compliant development code by the statutory deadline outlined in the bill, then a model ordinance developed by the Land Conservation and Development Commission (LCDC) will apply directly. Currently, there are two model ordinances under development – one applicable to “Medium” cities and another applicable to “Large” Cities.

What is the difference between the Model Code and Administrative Rules?

The purpose of the Model Code is three-fold. Firstly, it provides an ordinance that can apply directly in the event a jurisdiction does not adopt an ordinance that complies with HB 2001. Secondly, local governments can choose to adopt the model code “wholesale” and be assured that the standards are HB 2001-compliant. Thirdly, it defines standards

for minimum compliance to provide guidance to jurisdictions that seek to develop their own middle housing standards.

The administrative rules outline the process and criteria by which the Department of Land Conservation and Development will evaluate middle housing ordinances adopted by local jurisdictions to determine whether they comply with the intent of HB 2001.

If a jurisdiction reaches a statutorily-defined population threshold, when will they be required to comply with HB 2001?

The required timeline for compliance with HB 2001 is currently under development as a part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

How will existing and future Codes, Covenants, and Restrictions (CC&Rs) be affected by HB 2001?

HB 2001 prohibits the establishment of new Covenants, Conditions & Restrictions or similar instruments that would prohibit middle housing or ADUs in a residential neighborhood. However, existing CC&Rs will remain in place.

What is meant by “clear and objective” standards? Will discretionary review processes for middle housing be allowed under HB 2001?

[OAR 660-008-0015](#) establishes that local governments may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Local governments may adopt and apply an optional alternative approval process based on approval criteria regulating appearance or aesthetics that are not clear and objective if the applicant retains the option of proceeding under the approval process that is clear and objective, the alternative process complies with applicable statewide land use planning goals and rules, and the alternative approval process authorizes a density at or above the density level authorized in the zone under the clear and objective approval process.

In other words, local governments will be able to adopt and apply a discretionary review process for middle housing, but all middle housing development applications must have the option of a clear and objective review path that does not have the effect of unreasonable cost or delay.

How will HB 2001 affect the Urban Growth Boundary (UGB) expansion process?

At periodic review or at any other legislative review of the comprehensive plan or regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government must demonstrate that its comprehensive plan or regional framework plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years.

HB 2001 allows jurisdictions to adopt density expectations assumed to result from the provision of middle housing, but this expectation may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures.

For jurisdictions located outside of a metropolitan service district (i.e. Metro), a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.

How will HB 2001 affect historic properties and districts?

Parameters for historic properties and districts in the model code and administrative rules are currently in development as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

Will HB 2001 affect the application of System Development Charges (SDCs), property tax exemptions/freezes, or construction taxes?

As part of the comprehensive plan and development code amendment process, HB 2001 requires local governments to consider ordinances and policies to increase the affordability of middle housing including:

1. Waiving or deferring system development charges
2. Adopting or amending criteria for property tax exemptions or freezes
3. Assessing a construction tax

House Bill 2003

Regional Housing Needs Analysis (RHNA)

What is the Regional Housing Needs Analysis?

The Regional Housing Needs Analysis (RHNA; pronounced “ree-na”) is a statewide needs analysis by region to analyze and quantify the housing shortage and future needs in our state. The methodology for this analysis is currently under development by Oregon Housing and Community Services. HB 2003 requires that this analysis determine housing needs of a region and of each city and Metro for a 20-year period. Additionally, the RNHA will include analysis related to the equitable distribution of publicly supported housing within a region and a housing shortage analysis for each city and Metro.

This is a feasibility study of how to conduct a regional housing needs analysis in Oregon, and the results and recommendations will be returned to the legislature for further consideration related to how this analysis might continue to be conducted in the future. HB 2003 requires that the methodology be completed and run by September 1, 2020, with a report due to the Oregon Legislature by March 1, 2021.

What data will be used in this analysis? Will it provide an accurate assessment of regional housing needs?

There is limited availability of statewide data sets that can provide sufficient level of detail to conduct the required analysis. To ensure the analysis provides as accurate of an assessment of regional housing needs as practical, the RHNA will utilize Census American Community Survey Public Use Microdata Sample (PUMS) 5-year data, and the shortage analysis will utilize Census Comprehensive Housing Affordability Strategy (CHAS) data.

Will there be opportunities to include qualitative data in the RHNA? Or is it solely quantitative?

Given the timeline and resource constraints associated with conducting a robust qualitative methodology, the RHNA as required by HB 2003 will be conducted using quantitative data. Recommendations in the legislative report due March 1, 2021 will include considerations of how to improve the process, which may include the incorporation of a qualitative component.

How are the regions defined?

Census American Community Survey Public Use Microdata Sample (PUMS) divides Oregon counties into discrete geographies. While it is possible to combine PUMS regions, it is not advisable to break these regions into smaller subregions. Unfortunately, this means that regional boundaries are limited by the boundaries utilized by PUMS data.

While final regions have not yet been defined, it is clear that boundaries in this first iteration of the RHNA may not fully correspond to what may be perceived as a regional housing market. The legislative report due March 1, 2021 will discuss the limitations of this approach and provide recommendations on creating regions that better reflect regional housing markets throughout the state.

What does “affordability” mean in context of the RHNA?

HB 2003 requires that the analysis must classify housing by “Affordability” which is housing that is affordable to households with:

1. Very low income - income at or below 50 percent of the area median income
2. Low income - income above 50 percent and at or below 80 percent of the area median income
3. Moderate income - income above 80 percent and at or below 120 percent of the area median income
4. High income – income above 120 percent of the area median income

“Area median income” is defined in the bill as the median income for households established by the United States Department of Housing and Urban Development. OHCS defines affordability as a household spending no more than 30% of their gross income on housing costs.

How will this analysis be used?

The purpose of the RHNA as prescribed in HB 2003 is to conduct a one-time feasibility study of how to conduct a regional housing needs analysis in Oregon, and the results and recommendations will be returned to the legislature for further consideration. The analysis will summarize the findings of the regional housing needs analysis, estimate of housing stock, housing shortage analysis and estimate of housing necessary to accommodate growth.

The legislative report provided by the Department of Land Conservation and Development will evaluate the methodology and assessment produced by Oregon Housing and Community Services. You can read about the specific requirements of this report in [Section 2](#) of the bill.

Housing Needs Analysis (HNA)

Which jurisdictions are required to conduct a Housing Needs Analysis?

HB 2003 requires adoption of a statewide schedule for cities with a population greater than 10,000 to update a local Housing Needs Analysis (HNA).

When will they need to complete a Housing Needs Analysis?

Cities within Metro will be required to update HNAs every six years, cities outside Metro must update every eight years. You can find a completed Housing Needs Analysis Update Schedule here: <

https://www.oregon.gov/lcd/UP/Documents/Final_HNA_Schedule_20191220.pdf>

Housing Production Strategy (HPS)

What is a Housing Production Strategy? Which jurisdictions are required to produce a Housing Production Strategy?

HB 2003 requires cities with a population greater than 10,000 to prepare and adopt a housing production strategy, in accordance with rules adopted by DLCD. A Housing Production Strategy (HPS) is an extension of a Housing Needs Analysis and must include a list of specific actions that the city shall undertake to promote development within the city to address housing needs identified in their HNA.

When will they need to produce a Housing Production Strategy?

A city is required to adopt a Housing Production Strategy within one year of the adoption of their six or eight year Housing Needs Analysis.

What strategies will a jurisdiction need to incorporate in their HPS?

A housing production strategy (HPS) must include a list of specific actions that the city shall undertake to promote development within the city to address housing needs identified in their HNA. This may include:

1. The reduction of financial and regulatory impediments to developing needed housing, including removing or easing approval standards or procedures for needed housing at higher densities or that is affordable.

2. The creation of financial and regulatory incentives for development of needed housing, including creating incentives for needed housing at higher densities or that is affordable.
3. The development of a plan to access resources available at local, regional, state and national levels to increase the availability and affordability of needed housing.

Currently, the Department of Land Conservation and Development is developing rules that will provide further guidance on specific actions that a jurisdiction can incorporate into Housing Production Strategies they develop and adopt.

Will there be enforcement for jurisdictions to implement strategies identified in their HPS?

Section 6 of [HB 2003](#) establishes Land Conservation and Development Commission (LCDC) enforcement authority to ensure Housing Production Strategy implementation and progress. Specific parameters for enforcement is currently under development as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

General Questions

If a jurisdiction reaches a statutorily-defined population threshold, when will they be required to comply with HB 2003?

The required timeline for compliance with HB 2003 is currently under development as a part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

Implementation

Rulemaking

What rules will be adopted for HB 2001 and HB 2003?

In response to HB 2001 and HB 2003, the Land Conservation and Development Commission has initiated rulemaking to begin implementation of the 'middle housing' and housing production strategy requirements. These include administrative rules for the following elements of HB 2001 and HB 2003:

- Infrastructure Based Time Extension Request
- Middle Housing in "Medium" Cities
- Middle Housing in "Large" Cities
- Housing Production Strategy

To advise on this rulemaking, the commission directed DLCD to establish a rulemaking advisory committee. The purpose of the committee is to ensure that both the commission and DLCD hear from a broad group of stakeholders and interested persons during the rulemaking process. You can find out more information about committee meetings on the [Housing Rulemaking](#) page.

When will Administrative Rules be adopted?

Each set of Administrative Rules has its own timeline for adoption based on statutory deadlines and priorities of LCDC. They are listed below.

Infrastructure Based Time Extension Request – To provide local governments sufficient time to develop an IBTER, LCDC aims to adopt administrative rules by early August 2020.

Middle Housing in “Medium” Cities – The statutory required adoption date for administrative rules is December 31, 2020, but to provide local governments sufficient time to develop and adopt middle housing code, LCDC aims to adopt a model code and administrative rules by early August 2020.

Middle Housing in “Large” Cities – The statutory required adoption date for administrative rules is December 31, 2020. The anticipated date of LCDC rule adoption is November 12-13, 2020.

Housing Production Strategy – There is no statutory deadline for Housing Production Strategy rule adoption. The anticipated date of LCDC rule adoption is November 12-13, 2020.

How do I provide comments to DLCD, the Land Conservation and Development Commission, the Rulemaking Advisory Committee, or the Technical Advisory Committee during the rulemaking process?

You are welcome to submit comments electronically or in-person during the rulemaking process. If you would like to submit comments electronically, please submit them to housing.dlcd@state.or.us. If you would like to attend a Rulemaking or Technical Advisory Committee meeting and submit comments in-person, please visit the [Housing Rulemaking](#) page for additional information on time and location of these meetings.