



MEMORANDUM

To: Clackamas County Planning Commission

From: Martha Fritzie, Principal Planner
Karen Buehrig, Long Range Planning Manager
Jennifer Hughes, Planning Director

Date: February 21 2021

RE: Update on File ZDO-285: Climate Friendly and Equitable Communities (CFEC) Rules

The purpose of this study session is to update the Planning Commission on the Climate Friendly and Equitable Communities (CFEC) rules that were recently adopted by the State to help meet the state’s goal of reducing greenhouse gas emissions. This study session will focus on the CFEC rules that are directly related to parking requirements in the urban, unincorporated area and will be presented in two parts. Implementation of both parts is mandatory under state law:

Part 1 (“Parking A”) is informational and Staff will describe what new parking rules are already in effect and being implemented directly from State law.

Part 2 (“Parking B”) will include a summary of the three Pathways available for implementation of additional rules to further revise parking regulations and will include several discussion items for the Planning Commission.

More details about the CFEC parking rules are found in the attachments to this memorandum.

BACKGROUND

In August of 2022, the Land Conservation and Development Commission (LCDC) adopted a series of changes to their existing rules, including changes to the Transportation Planning Rule (TPR), that were designed to better support climate friendly and equitable communities. These new rules apply in Oregon’s eight urban areas with populations over 50,000 people, including the Portland Metro region. The new rules include a variety of required compliance dates for local jurisdictions to implement the changes and amend their development codes to reflect the new rules. While many of the changes take effect when the county’s Transportation System Plan is updated, mandatory reductions in parking requirements take effect in two phases, the first on December 31, 2022, and the second on June 30, 2023 (unless an extension is granted).

These rules are not without controversy. And, in fact, there are two different efforts underway to change or eliminate these rules:

1. In the fall of 2022, one county and 13 cities filed a lawsuit challenging the CFEC rules. As part of that action, they requested an injunction (or “stay”) that would prevent the rules from taking effect until the lawsuit is resolved. In December 2022, the Court

rejected the request for a stay, and therefore some of the new parking rules have already gone into effect. The decision by the Court regarding the merits of the lawsuit is still pending, and the Board of County Commissioners has directed County Counsel to submit an *amicus curiae* (“friend of the court”) brief in support of the challenge to the CFEC rules.

2. In the current legislative session, a bill has been introduced – House Bill (HB) 2659 – that would prohibit the state from enforcing the existing CFEC rules and would require the state to revisit the CFEC rules and adopt amended or replacement rules by January 1, 2028. The state would not be able to adopt the new rules unless they had the support of the governing bodies of 80% of the local governments that would be subject to the rules.

Because the outcomes of both of these efforts is uncertain and the current rules that are in effect have firm deadlines, the county must continue to move forward with implementation.

The CFEC parking management rules are outlined in [OAR 660-012-0400 through OAR 660-012-0450](#). These rules apply to portions of counties in a metropolitan area within an urban growth boundary that are served by urban water and sanitary sewer services. In Clackamas County, this includes unincorporated areas that currently have urban zoning districts (see map, *Attachment 1*). Cities located within a metropolitan area must comply with the same rules as the county; many of these cities also have additional requirements related to parking management, electric vehicle charging, and establishing “climate friendly areas.”

PART 1: PARKING A

The parking management rules in the OARs are mandatory. The first set of rules – frequently referred to as “Parking A” – went into effect on **December 31, 2022**. There was no option for an extension of this implementation date, but jurisdictions were not required to amend their zoning codes for Parking A and could instead implement the rules directly from the state law. Clackamas County has opted to implement the Parking A rules directly from state law, and therefore, no Zoning & Development Ordinance (ZDO) amendments have been proposed yet.

Parking A requires the county to remove or reduce the minimum number of off-street parking spaces required for certain types of development and for development within certain proximity to transit, as follows (See *Attachment 2b* for more details):

- **No more than one parking space per dwelling unit** can be required for residential developments with more than one unit on a lot.

Most middle housing (plexes, townhouses and cottage clusters in low-density residential zones) and all studio and one-bedroom units in multifamily developments already have a one-space per unit parking requirement in the ZDO. This change will result in a reduction of required parking for multifamily development with two or more bedrooms and middle housing types in medium and high-density zoning districts.

- **No parking required** for the development of:
 - (a) Child care facilities
 - (b) Single-room occupancy (SRO) housing
 - (c) Dwellings smaller than 750 sq. ft.
 - (d) Affordable housing (at or below 80% AMI)

- (e) Publicly-supported housing
 - (f) Emergency and transitional shelters for people experiencing homelessness
 - (g) Domestic violence shelters; and
 - (h) Facilities or homes designed to serve people with psychosocial, physical, intellectual or developmental disabilities, including but not limited to a: residential care facility, residential training facility, residential treatment facility, residential training home, residential treatment home, and conversion facility.
- **No parking required** for *any* new development on a lot that is completely or partially within:
 - (a) 3/4-mile of rail transit stop or
 - (b) 1/2-mile of frequent transit corridor (as defined in the Rule)

The rules allows for this distance to be measured by either walking distance or straight-line distance. Based on general policy direction and concerns identified by the Board of County Commissioners (BCC), the county is implementing this using walking distance. See *Attachment 2a* for a reference map identifying the areas identified as within this “walking distance” buffer.

Not requiring off-street parking for the identified development types and near transit represents a significant change for development in the county, particularly for commercial development. Off-street parking is currently required for all commercial uses and can range as high as 15 spaces per 1,000 square feet of space for a use like a restaurant.

It is important to note that the rules do not prohibit developers from *choosing* to provide off-street parking (or more off-street parking than the minimum for those uses that retain a minimum); rather, they prevent the county from *requiring* that they do so. However, parking maximums currently apply in some locations, and as part of Parking B, additional parking maximums may be established.

PART 2: PARKING B

The second set of rules – frequently referred to as “Parking B” – require jurisdictions to amend their zoning codes and must be implemented by **June 30, 2023**, unless a jurisdiction requests and is granted an exception through the “Alternative Dates” process outlined in the rules.

Clackamas County did request an “Alternative Date” for implementation of Parking B, which has been granted. The county has an additional year (until **June 30, 2024**) to make any necessary ZDO changes and develop any new programs necessary to implement one of the three Pathways identified in Parking B.

Parking B Pathways

Parking B provides three Pathways for a jurisdiction to choose between but also includes some items that are required, regardless of which Pathway is chosen. The Parking B elements are summarized below and presented in more detail in the table in *Attachment 3*.

All Pathways:

- A. Maintain parking reductions and removal of parking mandates (minimum off-street parking requirements) included in **Parking A** – and incorporate these regulations in to local zoning codes.

- B. Amend development standards for parking lots to require parking lots more than ¼-acre in size to install tree canopy, solar panels (or pay a fee-in-lieu-of solar panels), or incorporate other green technology;
- C. Adopt policies and regulations to encourage conversion of underused parking areas and allow for shared parking and preferential parking for carpools and vanpools; and
- D. Establish off-street parking maximums in certain locations (downtowns, designated centers, transit-oriented development, etc.).

Pathway 1:

- E. Remove all parking mandates in the urban area.

Pathways 2 and 3:

- F. Allow for parking reductions for car sharing, electric vehicle charging spaces and other circumstances in a development;
- G. Allow shared parking and off-site parking within 2,000 feet to count toward parking minimums;
- H. Remove all parking mandates in a Regional or Town Center boundary and within ¼-mile of that boundary or remove only some specified mandates and create a parking benefit district with paid on-street parking within the boundary;
- I. Unbundle parking for multifamily residential units built in a Regional or Town Center boundary; and
- J. Implement either the “fair parking policy approach” or the “reduced regulation parking management approach”, as noted below

<i>Pathway 2: Fair Parking Policy Approach</i>	<i>Pathway 3: Reduced Regulation Parking Management Approach</i>
Adopt at least 3 of 5 policies below:	Adopt regulations doing all of the following:
1. Unbundle parking for residential development with 5 or more units (may exempt townhouses)	1. No mandates for a variety of specific uses, small sites, vacant buildings, studio/one-bedroom units, historic properties and others
2. Unbundle leased commercial parking	2. Set parking maximums
3. Require businesses with more than 50 employees provide flexible commute benefits	3. No additional parking for redevelopment/ additions
4. Tax on parking lot revenue	4. Designate at least one residential parking district to manage on-street residential parking through permits, payments or time limits
5. No more than 1/2 space per unit for multifamily development	

Parking B Considerations

Pathway 1: As noted in the table in *Attachment 3*, Pathway 1 is, by far, the easiest and least costly to implement for a number of reasons:

- It could be implemented solely by the Planning & Zoning Division and it would involve relatively straightforward amendments to the Comprehensive Plan (Plan) and ZDO.
- Because the majority of the amendments are mandated, there are very few options and public outreach would be limited mostly to information presentations and the typical opportunities for testimony at hearings.
- The amendments would be the simplest to administer and to explain to the public.

Other considerations for Pathway 1:

- These rules would not prohibit the county from allowing a developer to provide off-street parking; they simply prohibit the county from requiring it. Staff is aware of two proposed developments within the “Parking A” transit buffer that are not required to provide off-street parking and in both cases the developer is choosing to provide off-street parking. In one case, the developer would provide less than would be required by the ZDO and in the other case, they would comply with the requirements of the ZDO.
- Because the “Parking A” provisions would remain in effect if this pathway is not selected, the biggest impacts of this Pathway would be to the county’s industrial areas and the single-family neighborhoods that are not already impacted by Parking A.

For the single-family neighborhoods, removal of all parking mandates could remedy a situation of inequity created by Parking A. Under Parking A rules, neighbors with similar properties may be subject to different development standards, different development potential and even possibly property valuation, because the development potential of the property that does not have to provide parking may be higher (i.e. more dwelling units could fit). But any impacts of on-street parking would be shared by all properties.

- There are potential drawbacks to this option. Just because some developers are choosing to provide off-street parking, it certainly does not mean that all developers will choose this option. The county’s urban area contains roadways on which increased on-street parking could pose problems for pedestrians and congestion. Removing parking mandates across the entire urban area could create on-street parking problems that do not currently exist in some residential neighborhoods. On the other hand, if that did occur, the county could implement parking districts to address the issues where they are occurring.

Most jurisdictions that Staff have spoken with have indicated they are likely to implement Parking B through this pathway but many, like the county, have filed for extensions to have more time to consider the implications. In Clackamas County, the City of Milwaukie is currently in the hearings process to implement this pathway. Several other jurisdictions in the state have already removed parking mandates to comply with this pathway, including Corvallis and Tigard.

Pathways 2 & 3: Both Pathway 2 and 3 are significantly more complicated, time-consuming, and costly to implement and administer than Pathway 1:

- Both require involvement of other departments/agencies besides DTD/Planning & Zoning.
- Both will require new programs and additional funding.

- Both would require urban unincorporated Clackamas County to establish an on-street parking pricing program. The county does not currently have such a program or a mechanism to administer or enforce it. Staff is also unsure where the county has an on-street parking problem significant enough that a parking district would even make sense. This type of program also may create more expense for existing property owners (assuming they would have to pay for parking permits).
- Both require “unbundling” of parking with certain developments, which is a program that would require additional research and analysis to understand how it would be done and which department would implement and enforce it. In general terms, “unbundling” means that landlords must lease parking separately, rather than automatically including it in the rental price of a dwelling unit or commercial space. Since this seems to be more of a landlord-tenant issue than a zoning issue, it would likely require amendments to the County Code.

Pathway 2 (Fair Parking Approach) is expected to be particularly challenging to implement because four of the five items to choose from include new programs. Both the unbundling of parking and requiring certain businesses to provide flexible commute benefits would involve a significant amount of work and new funding to a county agency or department that is currently not set up to administer these types of programs.

In addition, the idea of taxing parking lot revenue raises two main issues:

- (1) Staff is not aware that there are any parking lots in the county that even generate revenue (charge a fee); and
- (2) Additional legal analysis needs to occur to understand the mechanism by which this tax/fee would be imposed (e.g., BCC approval, voter approval).

Pathway 3 (Reduced Regulation Parking Management Approach) is expected to be marginally easier to implement than Pathway 2. Despite its name, it actually includes a sizeable number of new regulations that would need to be included in the county’s ZDO. While these new regulations would result in reduced parking requirements for a lot of developments, they are complicated and, when combined with Parking A requirements, would have the practical effect of removing parking mandates for the vast majority of development that the county would see in the urban unincorporated area, except in industrial areas and for some single-family homes.

In addition, this Pathway includes the establishment of a residential parking district, which is something that the county does not currently have the mechanism to administer. This type of parking management program seems more appropriate for smaller cities or cities that already have an office established and infrastructure (parking meters, pay stations, signage, etc.) purchased and installed.

The primary question around Pathways 2 and 3 is whether there is enough value added by implementing all of the items in these Pathways compared to the significant time and expense that it would take to implement and administer on an ongoing basis.

Staff has not heard of any jurisdictions pursuing Pathway 2 and has heard of only one (city of Medford) that is considering pursuing Pathway 3.

Discussion Questions for Planning Commission

1. What are your main concerns about each of the “Parking B” Pathways?
2. What opportunities do you see in each of the Pathways under “Parking B”?
3. Do you feel strongly in favor or against any of the three Pathways the county could pursue to implement the “Parking B” portion of the CFEC rules?
4. Would there be enough “value added” under Pathways 2 and 3 to offset the significantly higher amount of time and expense they would take to implement and administer on an ongoing basis?

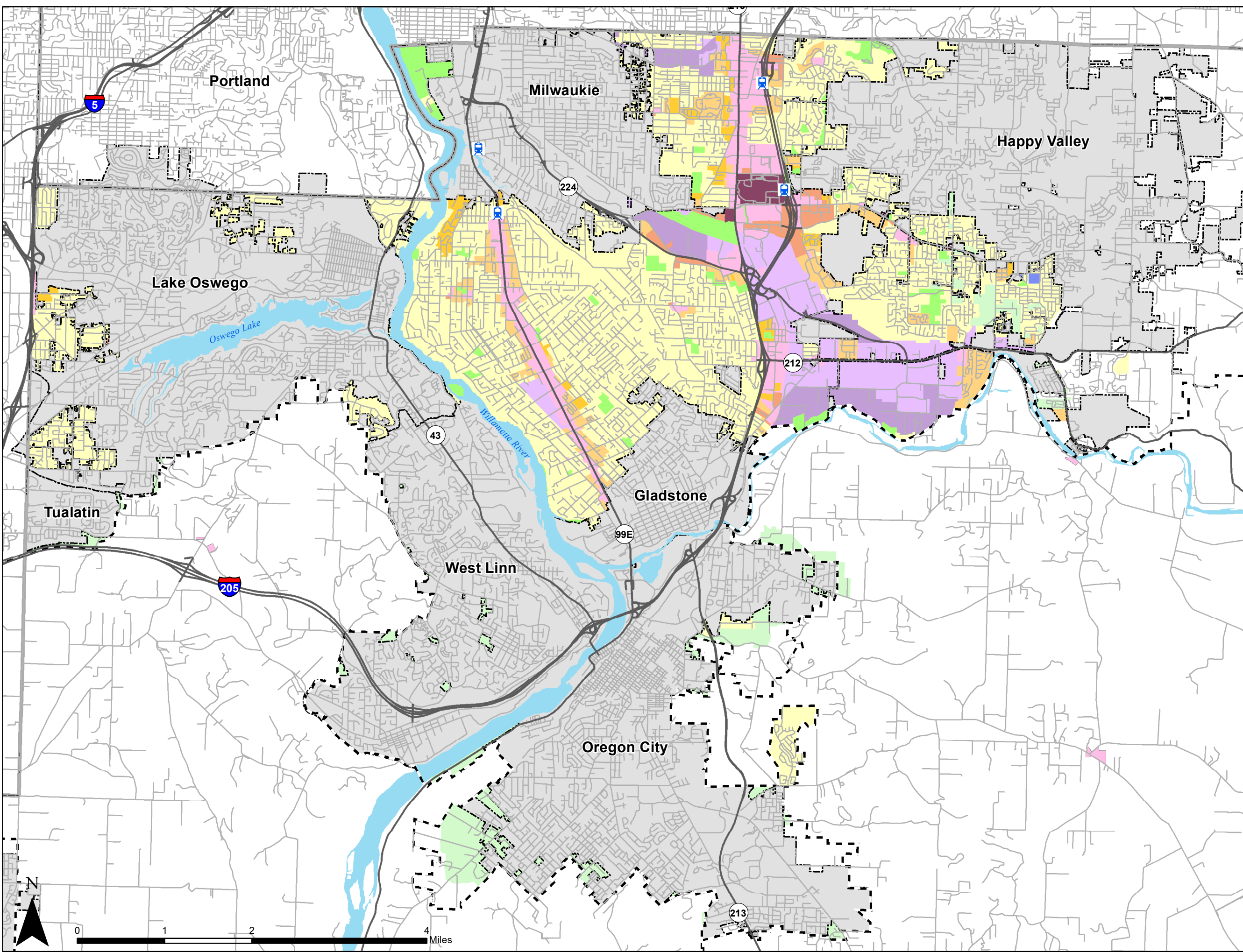
NEXT STEPS

Planning Staff will be engaging the Board of County Commissioners in a similar discussion about the Parking B pathways at a policy session on March 8, 2023. At that time, Staff plans to convey the Planning Commission’s feedback to the Board and to ask the Board for direction on which Pathway(s) to pursue.

Once Staff has obtained direction from the Board, we will establish a project work program and public outreach plan and begin implementation. Staff will also continue to monitor both the lawsuit and HB2659 and will report back to the PC and Board if there are any changes to the implementation of the CFEC rules or timelines.

ATTACHMENTS

1. Map: *Area Affected by CFEC Parking Rules*
2. **Parking A:**
 - a) Map: *Transit Walking Buffer Areas with No Parking Minimums*
 - b) Minimum Parking Space Requirements, Summary and Decision Flow Chart
3. **Parking B:** Summary Table of Pathways for Compliance with CFEC Rules

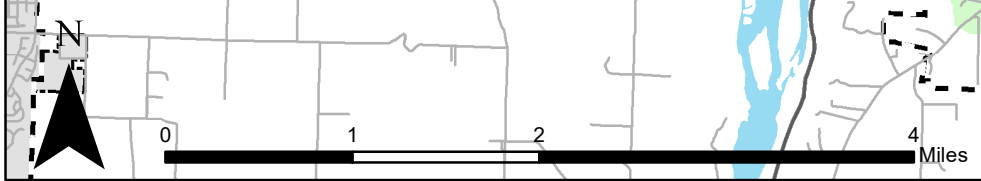


Areas Affected by CFEC Rules

- Light Rail Stop
- Highway
- Local Street
- County Line
- Urban Growth Boundary
- River/Lake
- City

Zoning

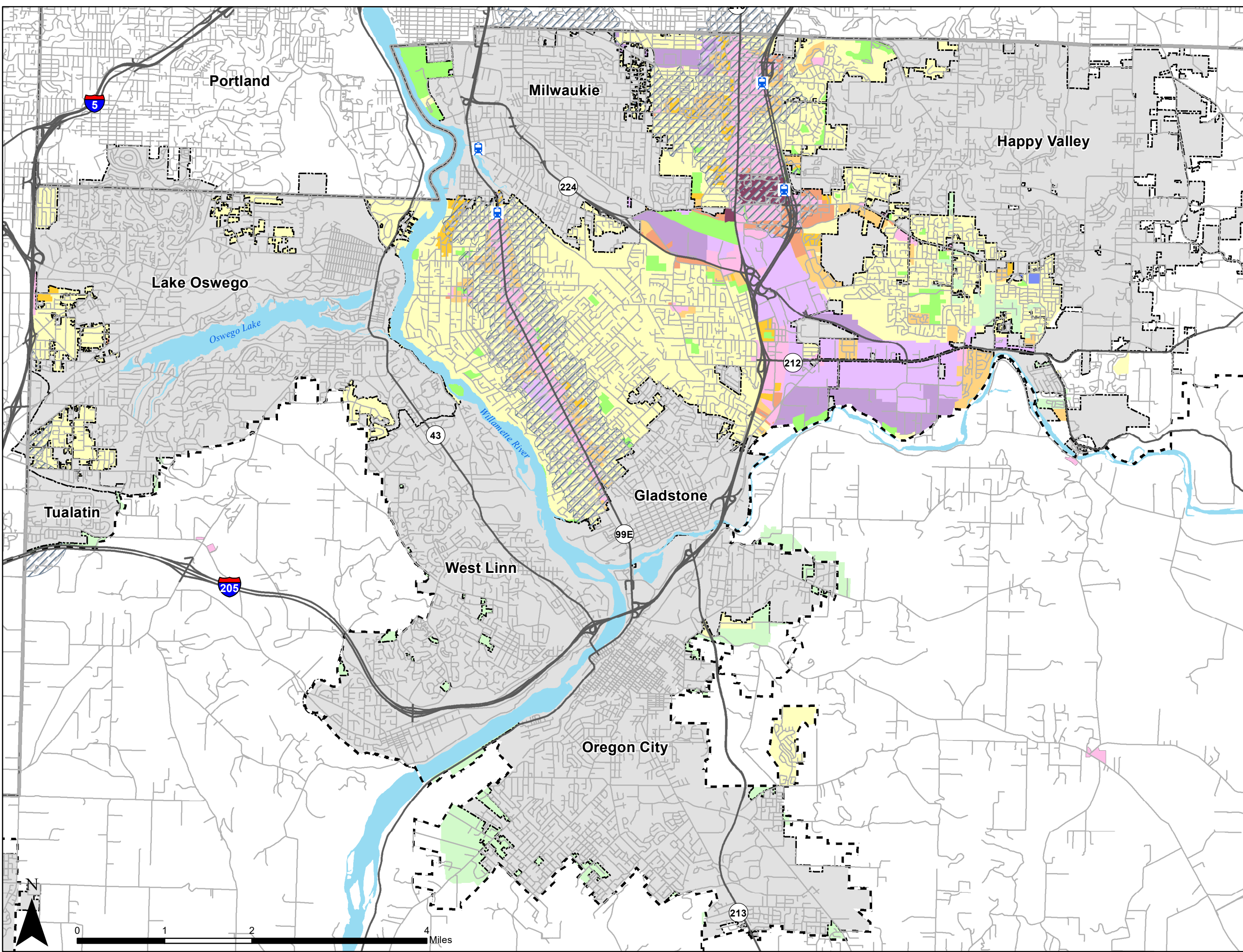
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Neighborhood Commercial / Rural Commercial
- Office Park
- General Commercial / Mixed-Use Development
- General Industrial
- Light Industrial / Business Park
- Planned Mixed Use
- Open Space
- Future Urban
- Village Office District
- Village Community Service District



Nov. 2022

Department of Transportation & Development
 150 Beaver Creek Rd. Oregon City, OR 97045

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Transit Walking Buffer Areas with No Parking Requirements

- Light Rail Stop
- Highway
- Local Street
- County Line
- Urban Growth Boundary
- River/Lake
- City
- Transit Walking Buffer (based on Rule Text)

Zoning

- Low Density Residential
- Medium Density Residential
- High Density Residential
- Neighborhood Commercial / Rural Commercial
- Office Park
- General Commercial / Mixed-Use Development
- General Industrial
- Light Industrial / Business Park
- Planned Mixed Use
- Open Space
- Future Urban
- Village Office District
- Village Community Service District





Parking A: Effective December 31, 2022

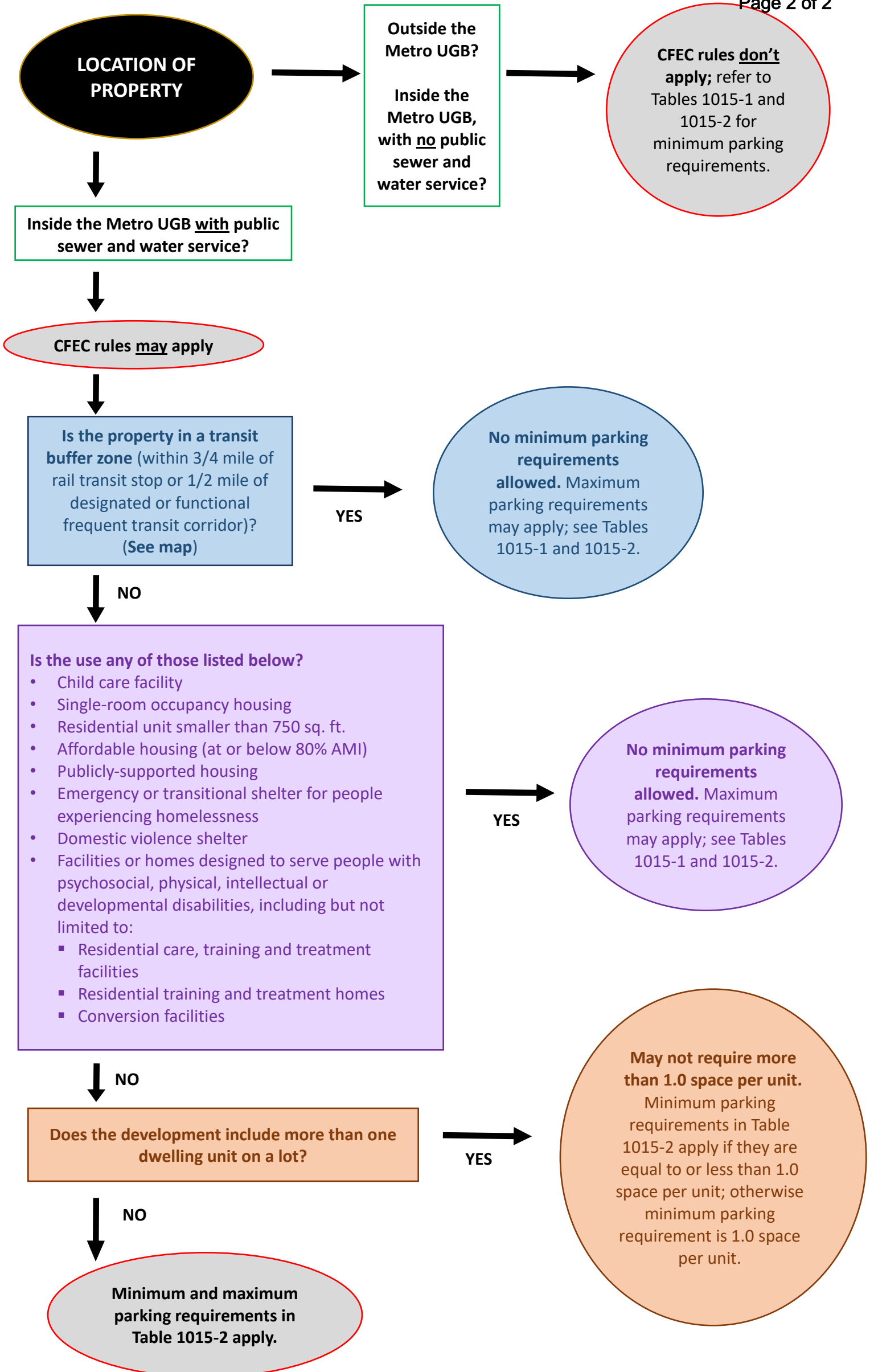
[OAR 660-012-0400 through OAR 660-012-0450](#)

- I. **Mandatory:** No option for extension; may implement directly from the state law
- II. **Applicability:** Applies to properties inside the Metro UGB that also have public water and sewer service
- III. **Requirement:** Remove or reduce minimum number of required off-street parking spaces for certain types of development and for development within certain proximity to transit, as follows:
 - [660-012-0430 \(2\)](#) **No more than one parking space per dwelling unit** can be required for residential developments with more than one unit on a lot. Most middle housing (plexes, townhouses and cottage clusters in low density residential zones) and all studio and one-bedroom units in multi-family developments, already have a one-space per unit parking requirement in the county's ZDO.
 - [660-012-0430 \(3\)](#) **No parking can be required** for the development of:
 - (a) Child care facilities
 - (b) Single-room occupancy (SRO) housing
 - (c) Dwellings smaller than 750 sq. ft.
 - (d) Affordable housing (OAR 660-039-0010)
 - (e) Publicly-supported housing (ORS 456.250)
 - (f) Emergency and transitional shelters for people experiencing homelessness
 - (g) Domestic violence shelters; and
 - (h) Facilities or homes designed to serve people with psychosocial, physical, intellectual or developmental disabilities, including but not limited to residential care facility, residential training facility, residential treatment facility, residential training home, residential treatment home, and conversion facility.
 - [660-012-0440 \(2 & 3\)](#) **No parking can be required** for any new development on a lot that is completely or partially within:
 - 3/4-mile of rail transit stop or
 - 1/2-mile of frequent transit corridor (as defined in the Rule)

The rule allows for this distance to be measured by either walking distance or straight-line distance. Based on policy direction to date from the Board, the county will identify this area via walking distance; see attached for map guidance in identifying this area.

**Note: These rules do not prohibit the county from allowing a developer to provide off-street parking (or to provide more off-street parking than the minimum for those uses that retain a minimum); rather, they prevent the county from requiring that they do so. Parking maximums apply in some locations (per ZDO Section 1015) and additional maximums may be established as part of "Parking B" in the CFEC rules (which will be implemented at a later date).*

Parking A: Minimum Parking Space Requirements
Based on Climate-Friendly and Equitable Communities (CFEC) Rules



SUMMARY OF CLIMATE FRIENDLY AND EQUITABLE COMMUNITIES (CFEC) PATHWAYS FOR COMPLIANCE WITH “PARKING B”

Major Task/ Element		Requires New Program?	Responsible Dept/Division	Method to Implement	Level of Staff Effort (Low, Med, High)	Expected Project Duration	Relative Cost to the County (\$, \$\$, \$\$\$)	Considerations/ Concerns/ Opportunities		
ALL PATHWAYS	A	Maintain parking reductions and removal of parking mandates included in Parking A (amend codes to reflect requirements)	No	DTD/ Planning & Zoning	Comprehensive Plan (Comp Plan) and Zoning & Development Ordinance (ZDO) amendments	8-10 months	\$	<ul style="list-style-type: none"> Relatively straightforward Plan and ZDO amendments for staff to draft, unless FILO option for solar panels is chosen Standards predominantly required by state, little choice Public outreach would be fairly minimal above standard notice and hearings process - limited to presentations at CPO and other meetings; would not require consultant to assist The standards for parking lots and parking maximums would only apply if a developer chooses to provide parking in areas where it is not required 		
	B	Amend development standards for parking lots to require parking lots more than ¼-acre in size to install tree canopy, solar panels (or pay a fee-in-lieu-of solar panels), or incorporate other green technology	No (Yes, if FILO for solar panels)	DTD/ Planning & Zoning (unknown, if FILO for solar panels)					Low	\$
	C	Adopt policies and regulations to encourage conversion of underused parking areas and allow for shared parking and preferential parking for carpools and vanpools	No	DTD/ Planning & Zoning					(Med, if FILO for solar panels)	(\$\$, if FILO for solar panels)
	D	Establish off-street parking maximums in certain locations (downtowns, designated centers, transit-oriented development, etc).							Med	\$
PATHWAY 1	E	Remove all parking mandates (minimum parking requirements) in the urban area	No	DTD/ Planning & Zoning	Low	8-10 months	\$	<ul style="list-style-type: none"> Removal of all parking mandates in the urban area would be relatively straightforward and simple to implement. By far, the most economical to implement, particularly within the current budgetary and staffing constraints. Public outreach would be fairly minimal above standard notice and hearings process - limited to presentations at CPO and other meetings; would not require consultant to assist These rules do not prohibit the county from allowing a developer to provide off-street parking, it simply cannot be required Staff is aware of two proposed developments in the “Parking A” transit buffer, for which off-street parking will be provided, despite it not being required Remedies a situation created by Parking A in neighborhoods where similar properties are treated differently and potentially able to develop different amounts of housing on a lot, but where any impacts to streets are shared. 		

SUMMARY OF CLIMATE FRIENDLY AND EQUITABLE COMMUNITIES (CFEC) PATHWAYS FOR COMPLIANCE WITH “PARKING B”

Major Task/ Element		Requires New Program?	Responsible Dept/Division	Method to Implement	Level of Staff Effort (Low, Med, High)	Expected Project Duration	Relative Cost to the County (\$, \$\$, \$\$\$)	Considerations/ Concerns/ Opportunities	
PATHWAYS 2 & 3	Requirements for both Pathways 2 & 3	F	No	DTD/ Planning & Zoning	Plan & ZDO amendments	12-18+ months	\$	<ul style="list-style-type: none"> While the ZDO amendment portion of these regulations may not be particularly difficult to draft, they are complicated and will be time-consuming to explain and to administer. Unbundling parking is something that the county has no experience implementing. This would require additional legal analysis and the development of a program and enforcement mechanism that does not currently exist. It is a landlord-tenant issue, rather than a zoning issue, and program would likely be housed in County Code. 	
		G							Allow shared parking and off-site parking within 2,000 feet to count toward parking minimums
		H	Remove all parking mandates in a Regional or Town Center boundary and within ¼-mile of that boundary; <u>or</u>						
			manage parking by adopting a parking benefit district with paid on-street parking and reducing or removing mandates for certain residential and commercial development	Yes, for parking benefit district	Unsure who would develop, monitor, and enforce parking benefit district and paid on-street parking		High		\$\$\$
	I	Unbundle parking for multifamily residential units built in a Regional or Town Center boundary	Yes	Unsure who would develop, monitor, and enforce “unbundled” parking. Would likely need County Code amendments	High	\$\$\$			
	Pathway 2: Fair Parking Policy Approach	Adopt at least 3 of the 5 items below:							
		J1	Unbundle parking for residential developments with 5 or more units (may exempt townhouses)	Yes	Unsure who would develop, monitor, and enforce “unbundled” parking. Would likely need County Code amendments	High	12-18+ months	\$\$\$	<ul style="list-style-type: none"> Implementing these items would require new programs and funding Staff is uncertain how the implementation and enforcement of “unbundled” parking would occur. More research needs to be done to understand this type of program, particularly in the case of commercial development. “Unbundling” parking for all residential developments with “5 or more units” would include all multifamily and most cottage cluster developments Requiring and enforcing a flexible commute benefits program would require a new program and system of tracking large employers – possibly County Code amendments and a business license. Taxing parking lot revenue poses two main issues: (1) Staff is not aware that there are any parking lots in the county that even generate revenue (charge a fee); and (2) Additional legal analysis needs to occur to understand the mechanism by which this tax/fee would be imposed.
		J2	Unbundle leased commercial parking	Yes		High		\$\$\$	
		J3	Flexible commute benefits for businesses with more than 50 employees	Yes	Unsure who would develop, monitor and enforce new program	High		\$\$\$	
		J4	Tax on parking lot revenue	Yes	County Counsel/ Administration	County Code		High	
	J5	No more than 1/2 space per unit for multifamily development	No	DTD/ Planning & Zoning	Plan & ZDO amendments	Low		\$	
	Pathway 3: Reduced Regulation Parking Mgmt. Approach	Adopt regulations doing all of the following:							
		K1	No mandates within ½- mile of Regional Center or Town Center, or for a variety of specific uses, small sites, vacant buildings, studio/one-bedroom units, LEED certified buildings, historic properties and others	No	DTD/ Planning & Zoning	Plan & ZDO amendments	12-18+ months	\$	<ul style="list-style-type: none"> Implementing these items would require new programs and funding Would require county to establish an on-street parking pricing program which the county currently does not have the mechanism to administer. Staff unsure where such a program would be appropriate – it would require researching the scope of current on-street parking problems to determine if any merit this degree of intervention.
K2		Set parking maximums	No	Low				\$	
K3		No additional parking for redevelopment/ additions	No	Low				\$	
K4	Designate at least one residential parking district to manage on-street residential parking through permits, payments or time limits	Yes	Unsure who would develop, monitor, and enforce parking benefit district and paid on-street parking	High	\$\$\$				