

---

**Wednesday, November 18, 2020**

**7:30 AM – 9:00 AM**

**Digital Meeting**

**Register in advance for this webinar:**

[https://clackamascounty.zoom.us/webinar/register/WN\\_cM7OCrOvTTqDAAcr8KpROQ](https://clackamascounty.zoom.us/webinar/register/WN_cM7OCrOvTTqDAAcr8KpROQ)

Meeting ID: 825 4004 7255

Passcode: 666351

Telephone option: 1 (346) 248-7799

---

**Agenda**

**7:30 a.m. Welcome & Introductions**

**7:35 a.m. MPAC Issues**

- Debrief on 10/14 MPAC meeting  
*Led by County MPAC Representatives and County staff*

**7:50 a.m. JPACT Issues**

- November JPACT Agenda Topics  
*Presented by TPAC Staff*

**8:35 a.m. Other Issues**

- HB 2001 Rulemaking Update  
*Led by Clackamas County staff*
- Election outcome roundtable  
*Led by Clackamas County staff*

**9:00 a.m. Adjourn**

**Attachments:** JPACT/MPAC Work Programs  
TPAC Staff Memo  
HB 2001 LCDC Staff Report

Page 02  
Page 05  
Page 08



## 2020 JPACT Work Program

*As of 10/6/20*

*Items in italics are tentative*

<p><b><u>October 15, 2020</u></b></p> <ul style="list-style-type: none"> <li>• Resolution No. 20-5130 For the Purpose of Amending or Adding New Projects to the 2021-24 Metropolitan Transportation Improvement Program (MTIP) which Involves Five Projects Impacting ODOT and TriMet (OC21-03-OCT) <b>(Consent)</b></li> <li>• Mobility Policy Update (Kim Ellis, Metro; 20 min)</li> <li>• Burnside Bridge Update (Megan Neil, Multnomah County; 20 min)</li> </ul> <p><i>October 15-17: League of Oregon Cities Conference, Salem</i></p> <p><i>October 15: Oregon Mayor’s Association Meeting, Salem</i></p>	<p><b><u>November 19, 2020</u></b></p> <ul style="list-style-type: none"> <li>• Jurisdictional Transfer Assessment – Draft Recommendations (John Mermin, Metro; 20 min)</li> <li>• Interstate Bridge Replacement Program Partner Resolution (Margi Bradway, Metro; 45 min; Information/Discussion)</li> </ul>
<p><b><u>December 17, 2020</u></b></p> <ul style="list-style-type: none"> <li>• Metro Jurisdictional Transfer Project Action to accept Final Report for inclusion in 2023 RTP Technical Appendix(John Mermin, Metro) <b>(consent)</b></li> <li>• Emergency Transportation Routes Update <b>(Who Does this one?; 20 min)</b></li> </ul>	

**Parking Lot:**

- *TSMO Plan Update (Ted Leybold/Caleb Winter, Metro)*
- *Emerging Technology (Ted Leybold/Eliot Rose, Metro)*



## 2020 MPAC Work Program

*as of 10/07/20*

*Items in italics are tentative*

<p><b><u>Wednesday, September 9, 2020 - cancelled</u></b></p>	<p><b><u>Wednesday, September 23, 2020</u></b></p> <ul style="list-style-type: none"> <li>• MTAC Nominations for MPAC consideration (consent)</li> <li>• State housing legislation rulemaking update (DLCD; 5 min)- during Chair comments</li> <li>• Building Blocks Workshop (Sasha Pollack, Metro; 45 min)</li> <li>• Regional Waste Plan code update (Jennifer Erickson, 20 min )</li> <li>• Federal Agenda item for Affordable Housing (Jes Larson, Metro; 45 minutes)</li> </ul>
<p><b><u>Wednesday, October 14, 2020</u></b></p> <ul style="list-style-type: none"> <li>• Site Readiness Toolkit Update(Jeff Raker, Metro; 30 min)</li> <li>• MPAC discussion of its role and composition (Commissioner Jayapal &amp; Vice Chair Callaway; Facilitated by Eryn Kehe Metro; 90 min)</li> </ul> <p><i>October 15-17: League of Oregon Cities Annual Conference, Salem, OR</i></p>	<p><b><u>Wednesday, October 28, 2020 - cancelled</u></b></p>
<p><b><u>Wednesday, November 11, 2020- Veteran's Day- cancelled</u></b></p>	<p><b><u>Wednesday, November 25, 2020 - cancelled (day before thanksgiving)</u></b></p>

<p><b><u>Wednesday, December 9, 2020</u></b></p> <ul style="list-style-type: none"> <li>• <i>Regional Mobility Policy Update: Case Studies and Policy Approaches (Kim Ellis, Metro/Lidwien Rahman, ODOT; 40 min)</i></li> <li>• <i>Regional Emergency Transportation Routes Update: Draft Map and Recommendations for Future Work (Kim Ellis, Metro/ Laura Hanson, RDPO40 min)</i></li> </ul>	<p><b><u>Wednesday, December 23, 2020 – cancelled</u></b></p>
---	---

Parking Lot & notes:

- 2020 Census Follow Up
- Regional forecast distribution (Metro staff TBD; 30 min)
- Community Partnerships Program
- Regional Data Strategy
- 2040 Planning and Development Grants: Tigard Triangle Urban Renewal Implementation Project (TBD; 45 min)
- Regional supportive housing services program update (Jes Larson, Metro; 30 min)
- Regional Site Readiness Toolkit (Alex Joyce, Cascadia Partners/ Lise Glancy, Port of Portland /Brittany Bagent or Matt Miller, GPI/ Jeff Raker, Metro, TBD)
- Minority Contracting discussion
- Agenda on Reimagine Oregon updates –suggested early priority for 2021
- Metro’s role in planning and investing in our economic future (Jeff Raker)

## Memorandum

**To:** C4 Metro Subcommittee  
**From:** Dayna Webb, City of Oregon City  
Jaimie Huff, City of Happy Valley  
Cities of Clackamas County TPAC Representatives  
**Re:** November 6, 2020 TPAC Meeting  
**Date:** November 18, 2020

---

### Overview

Following is a brief summary of the November 6, 2020 TPAC Meeting. The TPAC packet, as well as the full TPAC Work Program can be found [here](#).

#### General Updates

- Metro transportation funding ballot measure did not pass. Please see the Metro website for takeaways and next steps.
- The Metro Jurisdictional Transfer public comment period received 7 comment letters, and 40 people participated in a survey. TPAC will consider final reports next month.

#### Fatal Crash Briefing

- As of October 22, data suggests there have been 95 crash fatalities in the tri-county area year-to-date, with the greatest number of neighbors lost in October (15). Since the report, there have been two additional fatalities, bringing the total October number to 17 and total regional fatalities to 97. October fatalities include:
  - Christopher, 27, walking, MultCo, 10/30/20
  - Jonathan, 36, motorcycling, ClackCo, 10/26/20
  - Unknown, motorcycling, MultCo, 10/22/20
  - Devontay, age unknown, driving, MultCo, 10/22/20
  - Colins, 18, and Mauesby, 19, driving, MultCo, 10/18/20
  - Eric, 47, walking, WashCo, 10/12/20
  - Unknown, driving, MultCo, 10/10/20
  - Unknown (double), walking, MultCo, 10/10/20
  - Ryan, 37, driving, MultCo, 10/10/20
  - Brian, 24, motorcycling, MultCo, 10/9/20
  - Timothy, 41, motorcycling, MultCo, 10/9/20
  - Alexander, 33, driving, ClackCo, 10/8/20
  - Andrew, 26, motorcycling, MultCo, 10/4/20
  - Unknown (double), driving, MultCo, 10/1/20
- To-date, available data suggests *at least* 11 fatalities in 2020 have involved youth under the age of 21:
  - Colins, 18, and Mauesby, 19, driving, MultCo, 10/18/20
  - Dakota, 20, motorcycling, Clack Co, 9/16/20
  - Nicholas, 16, driving, Clack Co, 9/6/20
  - Sarah, 1, killed while walking, Mult Co, 7/30/20
  - Udell, 13, killed in a single motor vehicle crash, NE Lombard Street, Mult Co, 7/18/20; speed appears to be a contributing factor
  - Jack, 2, killed in a hit and run in front of his home, Milwaukie, Clack Co, 7/20/20; the police determined that speed was not a factor and that the driver may not have been aware of what happened
  - Unknown, 7, ClackCo, SE Platz and 362nd, killed in a head-on crash with a semi-truck, (it is possible that speed was a contributing factor in the crash), 4/13/20
  - Cornwell, 19, MultCo, Columbia River Highways, killed in multi-vehicle crash involving 2 motor vehicles and 3 commercial vehicles, 3/24/20
  - Charles Anthony, 16, ClackCo, killed in single vehicle crash, 1/29/20 (death attributed to suicide)
  - Luis, 11, MultCo, killed while walking, 1/6/20

### Metropolitan Transportation Improvement Program (MTIP) Formal Amendment 20-5144

**Purpose:** Amending One Existing and Adding Two New Projects to the 2021-24 MTIP Impacting Hillsboro, TriMet, and Washington County (NV21-04-NOV)

- This item was advanced to JPACT.

### 2024-27 Metropolitan Transportation Improvement Program (MTIP) Plan

**Purpose:** Provide an overview of the proposed work plan for developing the 2024-2027 MTIP.

- The [MTIP](#) is a federally required document that records how all federal transportation money is spent in the Portland metropolitan area over a four-year period. The MTIP also monitors and records state- and locally-funded projects that may significantly affect the region's air quality.
- The 2024-2027 MTIP will take approximately three years to develop, starting in summer/autumn 2020 and wrapping up in summer 2023 in order to submit the 2024-2027 MTIP to the Governor for inclusion in the 2024-2027 STIP and to federal partners (Federal Highway Administration, Federal Transit Administration). TPAC will be requested to provide a recommendation to JPACT and the Metro Council on adoption of the 2024-2027 MTIP document at the end of the MTIP development process in spring/summer of 2023.
- Key phases of the 2024-2027 MTIP development process include policy direction to define funding allocation programs and distribution of forecasted revenue to those programs; funding program allocation processes; and evaluation and documentation of compliance programming.
- In the more immediate future (summer 2020 – spring 2021), funding allocation programs will be defined, resulting in the deliverables of a 2024-2027 MTIP work plan and approach, adopted 2025-2027 Regional Flexible Fund Allocation (RFFA) policy direction, and adopted policy direction defining funding allocation programs by ODOT (2024-2027 STIP), TriMet, and SMART.

### **What does this mean for C4MS?**

*JPACT and the Metro Council serve as the final decision-making bodies for the 2024-2027 MTIP. For the individual funding allocations administered by Metro, ODOT, SMART, and TriMet, different decision-making bodies will determine the funding allocations to transportation projects and programs for fiscal years 2024-2027. In particular, the Metro RFFA process (i.e., local grants) will be determined by JPACT and the Metro Council, and advised by TPAC.*

### Proposed Unified Planning Work Program (UPWP) amendments for new planning projects from ODOT, TriMet and Metro

**Purpose:** Discuss proposed bundle of amendments to the 2020-21 UPWP for I-5/I-205 tolling, Red line Transit-Oriented-Development, and TV Highway.

- TPAC discussed these amendments at its November 6 meeting and will be asked to make a recommendation to JPACT at its December 4 meeting. JPACT and Metro Council will be asked to take action at their January meetings.
- Relative to I-5 and I-205 Portland Metropolitan Value Pricing, amendments increase total project budget from \$7m to approximately \$19.5m to reflect OTC obligations. The current phase is advancing two tolling locations – one each on I-5 and I-205 – for further refined analysis and review under federal environmental and tolling requirement and brings the total project budget to \$19.5 million. The planning/environmental analysis phase is expected to continue into 2023.

## **Upcoming Agenda Highlights**

- December 4, 2020

- Recommendation to JPACT on jurisdictional transfer – Recommendation to JPACT
- Recommendation to JPACT on UPWP Amendment – Recommendation to JPACT
- 2020 TSMO Strategy Update Progress – Information/Discussion
- *Interstate Bridge Replacement Program Partnership Resolution Update – Information/Discussion (Tentative)*
- January 8, 2021
  - Funding Obligation Targets – Briefing
  - Oregon City/West Linn bike/ped crossing update – *Information/Discussion*
  - Reimagining Safety & Security on Transit – *Informational*
- February 5, 2021
  - RFFA process and policy update – *Briefing/Discussion*
  - Regional Mobility Policy Update – *Information/Discussion*
  - Regional Congestion Pricing Study Update

**For additional information, please contact:**

Dayna Webb, City of Oregon City [dwebb@orc.org](mailto:dwebb@orc.org)

Jaimie Huff, City of Happy Valley [jaimiel@happyvalleyor.gov](mailto:jaimiel@happyvalleyor.gov)



October 29, 2020

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Gordon Howard, Community Services Division Manager  
Ethan Stuckmayer, Senior Housing Planner  
Robert Mansolillo, Housing Planner  
Sean Edging, Housing Policy Analyst



SUBJECT: **Agenda Item 4, November 12-13, 2020, LCDC Meeting**

## MIDDLE HOUSING LARGE CITIES MODEL CODE AND MINIMUM STANDARDS

### I. AGENDA ITEM SUMMARY

**Purpose.** This agenda item presents background for the second public hearing by the Land Conservation and Development Commission (LCDC or commission) on proposed Oregon Administrative Rules (OARs) for middle housing as required by HB 2001 (Attachment A), applying to Large Cities with a population over 25,000. To assist the commission in the review and the eventual adoption of the OARs for large cities, the Department of Land Conservation and Development (DLCD or department) has attached the proposed Oregon Administrative Rules (Attachment B), and the Large Cities Middle Housing Model Code (Attachment C). The required Fiscal and Housing Impact Statements for a new Administrative Rule are included as Attachment D. The Rulemaking Advisory Committee (RAC) appointed for this rulemaking has reviewed the Fiscal and Housing Impact Statements.

As a result of public comments on draft proposed OAR language and based on commission guidance, department staff have made refinements to the rules that were proposed to the commission at its September 2020 meeting. This staff report and the subsequent staff presentation will detail the specific recommended changes to the large cities rules and model code for commission consideration and adoption.

**Outcome.** Staff recommends the commission take action on this agenda item. At this meeting, upon closing the public hearing and completing their review of the updated proposed rules, the commission can make a motion for adoption of the model code and associated OARs using the recommended language in Section III.G of this report. These rules apply to cities outside of a metropolitan service district boundary with a population more than 25,000, a city with a population over 1,000 within the Portland



Metro boundary, or county unincorporated urbanized areas within the Portland Metro boundary.

## II. **BACKGROUND**

In 2019, the Oregon Legislature passed, and Governor Brown signed into law, House Bill 2001. This bill was passed with the intent to increase housing choice and supply.

HB 2001 requires middle housing to be allowed in all areas zoned for single-family residential development for cities with population above 10,000 and, within the Portland Metro Urban Growth Boundary (UGB), all cities with population greater than 1,000 and urbanized portions of counties. Non-Metro cities (“medium cities”) between 10,000 and 25,000 population must allow a duplex on all lots or parcels where single-family detached residences are currently allowed by city zoning. Cities greater than 25,000 population and the affected Portland Metro Area jurisdictions (“large and metro communities”) must, in addition to the duplex requirement noted above, allow triplexes, quadplexes, townhomes, and cottage clusters in areas zoned for single-family residential development. The bill has various other provisions that modify or are peripheral to these basic requirements. This staff report concerns the adoption elements for the large city code. The commission adopted medium city code requirements at their meeting in July 2020.

## III. **IMPLEMENTATION MEASURES**

In September 2019, with a charge developed by LCDC, department staff initiated a joint HB 2001/HB 2003 rulemaking process. With commission guidance, the department convened a rulemaking advisory committee (RAC) and a series of technical advisory committees (TACs) to assist in the development of the rules. The advisory committees consisted of a wide variety of housing, planning, and advocacy stakeholders and were co-chaired by two commission liaisons – Commissioner Anyeley Hallová and former Commission Chair Jerry Lidz.

At the time of this staff report, the advisory committee process is complete. The RAC met a total of ten times to discuss all aspects of the HB 2001 rulemaking process, including proposed OAR 660-046, the Medium and Large Cities Model Codes, and related Fiscal and Housing Impact Statements. The technical advisory committee tasked with reviewing the middle housing model code and rules met a total of nine times. At each of these meetings, the technical advisory committee provided feedback and comments on draft versions of proposed OAR Chapter 660, Division 46. For commission consideration, summaries of these meetings are included as Attachments E and F to this report. Department staff are grateful to RAC and TAC members for their extensive review, guidance and participation. A list of RAC and TAC members is included in Attachments M and N.

## **A. STAKEHOLDER AND COMMUNITY ENGAGEMENT**

To inform the rule and committee guidance, staff conducted extensive community outreach via webinar and in meetings throughout Oregon. This outreach effort included a series of six community conversations on housing held in McMinnville, Medford, Beaverton, Milwaukie, Hermiston, and Redmond. Summaries of these events are also included as attachments to this report. Summaries of these events are included as Attachment G and had been previously provided to commission in May.

Department staff have also sought guidance from other communities who historically may not have been able to or been asked to participate in the rulemaking process. These outreach efforts include focus groups with community organizations across the state, ensuring and supporting space for community members on the advisory committee roster.

In an effort to reach various perspectives that have traditionally been disproportionately impacted by housing policies, department staff allocated funds for several priority populations to engage in focus groups or rulemaking advisory committee meetings. Organizations representing or serving these populations included:

- Native American Youth and Family Center (NAYA)
- Portland African American Leadership Forum (PAALF)
- Community Alliance of Tenants (CAT)
- Lane Independent Living Alliance (LILA)
- Portland State University Homelessness Research & Action Collaborative (HRAC)

Department staff also established a separate email address – [housing.dlcd@state.or.us](mailto:housing.dlcd@state.or.us) – to collect additional written comments. Any comments the department received through this email address were provided to the rulemaking advisory committee and technical advisory committee for their consideration. The comments are also available to LCDC in Attachment H.

Additionally, department staff coordinated a Speaker’s Bureau to present information and receive feedback for the process. Speaker’s Bureau events included various planning or housing committee or organization meetings including the Metro Technical Advisory Committee, city planning commission or city council meetings, League of Oregon Cities, and Oregon Chapter of the American Planning Association events.

## **B. FRAMEWORK FOR MIDDLE HOUSING RULEMAKING**

Section (3)(2) of HB 2001 directs the Land Conservation and Development Commission to develop a model middle housing ordinance each for the medium cities and the large cities no later than December 31, 2020. This report discusses the Large Cities Model Code. Medium cities are required to allow duplexes in single-family zoned areas, while

Large Cities are required to allow duplexes and, in addition, triplexes, quadplexes, townhomes, and cottage clusters in single-family zoned areas. Development of the Large Cities Model Code serves two purposes: 1) the ordinance will provide guidance to cities in implementing code provisions that comply with the intent of HB 2001, and 2) it will apply directly to a city that does not adopt a code that is consistent with HB 2001 provisions and the provisions of any administrative rule adopted by the commission before the applicable statutory deadline.

To be in compliance with the provisions of HB 2001, a Large City must adopt updated local land use regulations by June 30, 2022. Prior to this adoption, the city must also submit code amendments through the post-acknowledgement plan amendment process for DLCD review and comment, pursuant to OAR 660-018. During the post-acknowledgement plan amendment process, department staff will review the proposed land use regulations and assess whether they comply with land use statutes and the statewide land use planning goals, including administrative rules and the provisions of Oregon Revised Statute Chapter 197 (Section 2 of HB 2001 is codified in ORS 197.758). If the code is not found to comply with the statute and rules noted above, DLCD staff will provide written comment to the submitting local government through the typical post-acknowledgement plan amendment process. Ultimately, any department appeal, or appeal by another party of a local government's middle housing code provisions would be heard and decided by the Land Use Board of Appeals (LUBA), with potential for appeal of LUBA's decision to Oregon's appellate courts.

As outlined in HB 2001, a Large City may either adopt the Large Cities Model Code as-is, either intentionally or through inaction. The city may also adopt other code provisions outside of the Large Cities Model Code so long as the standards are in compliance with the intent of HB 2001 and do not, individually or cumulatively, cause unreasonable cost and delay to the development of middle housing. The Large Cities Model Code is drafted such that all of its standards do not cause unreasonable cost or delay. However, in order for department staff to review for compliance the proposed code amendments that may differ from the standards of the Large Cities Model Code, the department must establish a set of baseline criteria or "minimum compliance standards" to compare with adopted local government middle housing codes.

To implement the bill, the department presents two products: 1) a model code that can provide guidance to cities and must be applied directly cities who do not take action to comply with HB 2001 and 2) Oregon Administrative Rule Chapter 660 Division 46 which outlines the middle housing rules applicable to medium and large cities and establishes middle housing minimum compliance standards that can be used to determine if middle housing land use regulations comply with HB 2001.

Throughout the development of both products as applied to Large Cities, the advisory committees, department staff, the project consultant, and the advisory committees held several core concepts at the forefront:

- The model code must define how middle housing other than duplexes should be allowed in areas that are zoned for residential use and also allow for the development of single-family dwellings. As with Medium Cities, Large Cities must allow duplexes on every lot or parcel zoned for residential use.
- The standards within the model code must not individually or cumulatively cause unreasonable cost and delay to the development of middle housing in Large Cities.
- The standards should be specific, clear, and objective.

Both of these products are described in more detail below and are provided for LCDC review. Both products are subject to comment during the public hearing scheduled during this agenda item.

### **1. Large Cities Middle Housing Oregon Administrative Rules**

Oregon Administrative Rules Chapter 660, Division 46 - Middle Housing in Medium and Large Cities (OAR 660-046) is a new set of rules to implement HB 2001. The draft rules were collaboratively developed by DLCD staff and a consultant team from Angelo Planning Group (APG), EcoNorthwest, and SERA Architects (project team). The Rulemaking and Technical Advisory Committee reviewed and provided comments on the preliminary versions of the minimum compliance standards in Division 46.

Division 46 establishes the minimum standards that a city must meet to be deemed compliant with the provisions of HB 2001. The standards outlined in Division 46 constitute the range of reasonable siting and design standards that local governments may adopt to regulate the development of middle housing. These standards are intended to allow local governments more flexibility than the standards included in the Large Cities Model Code.

In addition to reasonable siting and design standards, Division 46 outlines important process and enforcement rules such as division applicability, definitions, implementation, and noncompliance.

### **2. Large Cities Model Code**

The Large Cities Model Code was developed in conjunction with the minimum compliance standards of Division 46. The content of the Large Cities Model Code is similar to Division 46. However, whereas Division 46 provides flexibility to local governments in how they regulate middle housing within the parameters of the minimum compliance standards, the model code is a set of specific standards a Large City can apply without further interpretation or amendments.

Large Cities may also apply the model code in a modular fashion. A Large City is allowed to develop their own standards, adhering to the minimum compliance standards in Division 46, for most regulations but can apply the model code to other sections. A large city can apply all sections of the model code, or just the sections that will fit its unique implementation of HB 2001.

The model code is formatted and written so that it would operate as stand-alone chapters of a local development code including purpose, definitions, applicability, development standards, design standards, and middle housing conversion sections.

### **C. CHANGES TO OAR CHAPTER 660, DIVISION 046**

At the meeting on September 25, 2020, the department presented the commission with a draft version of the proposed Division 46 rules for large cities. The commission made comments on the draft rules and kept the public hearing open until November 12, 2020 to gather additional comments and feedback from the public. Since the September commission meeting, department staff have reconvened the Rulemaking Advisory Committee and Middle Housing Model Code Technical Advisory Committee to further discuss the draft rules. Along with comments from the commission, staff used this final meeting with the advisory committees to refine and update the Division 46 rules for Large Cities.

Department staff proposes several changes to the proposed rules since the commission last reviewed them in September. These changes are described in more detail below.

#### **1. Master Planned Communities**

The commission received public comments on how the draft rules address “master planned communities.” None of the comments received included any objections to providing some sort of exemption for the initial buildout of existing master planned communities. However some commenters recommended eliminating the provisions related to new master-planned communities, arguing that they were unnecessary and continued patterns of exclusion.

The department continues to believe that the administrative rules need a special provision for new master-planned communities. For such communities, which involve large amounts of new development on larger, undeveloped and un-serviced sites, local governments must plan for provision of adequate public facilities, including transportation, utilities, parks, and public services. In planning these new communities, local governments need to know the approximate number of total new dwelling units proposed in master planned communities in order to provide adequate public facilities and infrastructure. While communities can expect incremental and modest increases in middle housing types in existing neighborhoods, the economics of development are much different for large undeveloped parcels, where middle housing allowances could

lead to wide variations of up to four times the number of eventual residential units in such areas. Therefore, the department believes that a master plan area provision allowing local governments to set overall dwelling unit numbers is necessary.

Other comments questioned the definition of a “master plan,” adopted by a local government, questioning whether it would include a “concept plan” adopted by resolution, not ordinance, for an area not yet annexed to a city, or whether it would include a “community plan” that is adopted for areas that are already mostly or partially developed and have existing urban services. The department proposes modifications to the definition, shown below, that clarify a “master plan” is a plan that is adopted by resolution or ordinance as an amendment to a city’s existing comprehensive plan or land use regulations, and that is for an area that is not currently developed with urban-intensity residential uses.

The rule, as written, does not allow cities to prohibit redevelopment of housing in master planned communities with middle housing types once initial development has occurred. Staff received feedback that this will upset the balance of uses and planning with the community. The department’s recommendation is based upon the fact that, once these neighborhoods are initially built, they become like any other neighborhood within the local government. It would be highly unusual to expect significant redevelopment of newly developed housing for decades beyond initial development, at which point the initial conditions that led to approval and development of a master planned community would have changed significantly.

One comment staff and commission received noted problems with the draft rule language in that it does not distinguish between housing subject to HB 2001 and other housing types, such as multi-family development and manufactured homes in manufactured home parks. The department proposes revisions to correct this problem.

“Master Planned Communities” are defined in OAR 660-046-0020 as follows (changes are underlined):

10. *“Master Planned Community” means a site that is any one of the following:*
  - a. *Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary that is zoned for or proposed to be Zoned For Residential Use, and which is not currently developed with urban residential uses, for which a Large City proposes to adopt, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan;*
  - b. *Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary for which a Large City adopted, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan after the site was incorporated into the urban growth boundary; or*

- c. *Added to the Large City's urban growth boundary after January 1, 2021 for which the Large City proposes to adopt, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan.*

OAR 660-046-0205(2)(c) includes the following provisions regarding Master Planned Communities:

- c. *Master Planned Communities: Large Cities may regulate or limit the development of Middle Housing in Master Planned Communities as follows:*
  - A. *If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan after January 1, 2021, it may not limit the development of any Middle Housing type on lands where detached single-family dwellings are also allowed, but may limit overall net residential density within the master plan area provided that the allowed net residential density is least 15 dwelling units per acre. A Large City may designate areas within the master plan exclusively for other housing types, such as multi-family residential structures of five dwelling units or more or manufactured home parks. A Large City may not limit future conversion or redevelopment of already constructed detached single-family dwellings or Middle Housing dwelling units to any Middle Housing type.*
  - B. *If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan before January 1, 2021, it may limit the development of Middle Housing other than Duplexes provided it authorizes, in the entire master plan area, a net residential density of at least eight dwelling units per acre and allows all dwelling units, at minimum, to be detached single-family dwellings or Duplexes. A Large City may only apply this restriction to portions of the area not developed as of January 1, 2021, and may not apply this restriction after the initial development of any area of the master plan or a plan that functions in the same manner as a master plan, except that a Large City may prohibit redevelopment of other housing types, such as multi-family residential structures and manufactured home parks.*

## 2. Goal Protections

Since the September commission meeting, several edits have been made to OAR 660-046-0010(3) to reflect conversations with various goal experts. Revisions include the following:

1. Goal 5 Natural Resources: These revisions reflect discussions with DLCD's Goal 5 Natural Resource specialist. The section and the revisions are intended to prevent additional development pressure near sensitive natural resources. The section also includes a provision for jurisdictions that do not have Goal 5 protections, because the regulatory mechanism that ensured jurisdictions apply Goal 5 protection (Periodic Review) is unfunded.

*OAR 660-046-0010(3)(a)(A):*

- A. *Goal 5 Natural Resources – Pursuant to OAR 660-023-0050 through 660-023-0110, Medium and Large Cities must adopt land use regulations to protect water quality, aquatic habitat, and the habitat of threatened, endangered and sensitive species. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 5.*
  - i. *Medium and Large Cities may apply regulations to duplexes that apply to detached single-family dwellings in the same zone;*
  - ii. *Medium and Large Cities may limit the development of Middle Housing other than Duplexes in significant resource sites identified and protected pursuant to Goal 5; and*
  - iii. *If a Medium or Large City has not adopted land use regulations pursuant to OAR 660-023-0090, it must apply a 100-foot setback to Middle Housing developed along a riparian corridor.*
2. Goal 6 Air, Water, and Land Quality: This revision is intended to better reflect the responsibility local jurisdictions have to fulfill federal and state air, water, and land quality laws and regulations.

*OAR 660-046-0010(3)(b):*

- b. *Goal 6: Air, Water and Land Resources Quality – Pursuant to OAR 660-015-0000(6), a Medium or Large City may limit development within an urban growth boundary to support attainment of federal and state air, water, and land quality requirements. Medium and Large Cities may apply regulations adopted pursuant to Goal 6 to the development of Middle Housing.*
3. Goal 9 Economic Development: Staff from the City of Portland raised the need for a narrow exemption to limit Middle Housing development on lands that are zoned for single-family detached residential use but designated for future industrial/employment uses, as redevelopment with Middle Housing would be in conflict with the area's intended future use and comprehensive plan designation.



OAR 660-046-0010(3)(d):

*d. Goal 9: Economic Development - Pursuant to OAR 660-009-0025, Medium and Large Cities must adopt measures adequate to implement industrial and other employment development policies, including comprehensive plan designations. Medium or Large Cities may limit the development of Middle Housing on Lots or Parcels Zoned For Residential Use designated for future industrial or employment uses.*

4. Goal 15 Willamette Greenway: Goal 15 requires local jurisdictions review intensifications, changes of use or developments to insure their compatibility with the Willamette River Greenway. Many of these standards were adopted prior to the establishment of clear and objective development standards applied to housing (ORS 197.307). While the bill does not require addressing this apparent conflict, this section leaves a pathway for jurisdictions to allow the development of Middle Housing in the Greenway, provided that applicable standards conform to both ORS 197.307 and Goal 15.

OAR 660-046-0010(3)(e):

*e. Goal 15: Willamette Greenway – Pursuant to OAR 660-015-0005, Medium and Large Cities must review intensifications, changes of use or developments to insure their compatibility with the Willamette River Greenway. Medium and Large Cities may allow and regulate the development of Middle Housing in the Willamette Greenway, provided that applicable regulations adopted pursuant to Goal 15 comply with ORS 197.307.*

Staff would also like to clarify an important point on how Goal Protected Lands interact with higher Middle Housing requirements. Staff feels it is important to recognize that goal protections do not constitute full exemptions from higher Middle Housing requirements. Rather, the proposed OARs are drafted such that local governments can maintain the right to regulate higher Middle Housing in goal areas in conjunction with existing goal protections as provided in OAR 660-046-0010. While certain goals, including Goal 5 Natural Resources, Goal 6, Goal 7, Goal 9, and Coastal Goals allow reasonable limitations on Middle Housing development, Goal 15 provides a path to allow Middle Housing (and count lands towards compliance). Additionally, Goal 5 Historic Resources provisions do not allow for the prohibition of higher Middle Housing types, but do allow jurisdictions to apply standards that protect the integrity of historic resources.

The provision in Goal 5 Historic Resources is particularly important to prevent the misuse of historic district designations by neighborhoods that seek to fortify patterns of exclusion. Historic Preservation experts including Kim Fitzgerald – City of Salem, State of Oregon Historic Preservation Office staff, Carrie Richter – Restore Oregon, and others indicated that standards related to use and the number of dwelling units do not relate to the historic integrity of a structure. Rather, standards related to the façade, form, and design of structures and districts are the elements that relate to historic integrity. While historic resources/districts may not exclude Middle Housing uses, local governments will still be able to apply to Middle Housing the same procedural, form, and design standards as they apply to other structures to ensure historic integrity of a resource/district is maintained.

### 3. Infrastructure Constrained Lands

Participants have expressed concerns that the previous definition Infrastructure Constrained Lands included subjective language that made it difficult for a local government to know how to demonstrate that an area is subject to an infrastructure constraint and therefore triplexes, quadplexes, townhomes, and cottage clusters should not be allowed. It is true that the definition includes a number of subjective terms that will have to be evaluated by the department, such as “where it is not feasible”, “acceptable services”, and “limitations that a local government cannot correct”. However, it is impossible to anticipate all the factors that may contribute to an infrastructure constraint. Likewise, it is very challenging to develop clear and objective standards that would be appropriate for all affected cities. Circumstances will vary widely between cities regarding their infrastructure systems. Considering the range of circumstances that may exist on the ground, the burden of proof will necessarily be on the local government to demonstrate that the infrastructure constraint is a limitation that could not be addressed through the IBTER process, nor by proportionate improvements that would be required in conjunction with middle housing development. It will not be sufficient for a local government to claim an infrastructure constrained area without producing findings demonstrating how the infrastructure limitation qualifies as a constraint that cannot be corrected.

The existing definition for an “infrastructure constraint” follows:

*OAR 660-046-0020 Definitions (from proposed “Large City” rules)*

7. *“Infrastructure Constrained Lands” means lands where it is not feasible to provide acceptable water, sewer, storm drainage, or transportation services to serve new Triplexes, Quadplexes, Townhouses, or Cottage Cluster development; where the local government is not able to correct the infrastructure limitation by utilizing the process outlined in OAR 660-046-0300 through OAR 660-046-0370 due to cost, jurisdictional, or other limitations;*

*and which cannot be remedied by future development of Middle Housing on the subject Lot or Parcel.*

To further clarify these issues, the following amended language has been added to the infrastructure constrained lands portion of OAR 660-046-0205 (additional language is underlined):

2. *A Large City must allow for the development of Triplexes, Quadplexes, Townhouses, and Cottage Clusters, including those created through conversion of existing detached single-family dwellings, in areas zoned for residential use that allow for the development of detached single-family dwellings. A Large City may regulate or limit development of these types of Middle Housing on the following types of lands:*

*[...]*

- a. *Infrastructure Constrained Lands: Large Cities may limit the development of Middle Housing other than Duplexes on Infrastructure Constrained Lands. In order to demonstrate that an area is an Infrastructure Constrained Land, the Large City must either adopt findings in conjunction with the adoption of required Middle Housing allowances and limitations, or otherwise demonstrate to the Department that already adopted allowances and limitations are consistent with the definition provided in OAR 660-046-0020, could not be addressed through the process provided OAR 660-046-0300, and could not be addressed with required improvements that would be expected with Middle Housing development. The Large City may not consider an area to be infrastructure constrained based on any lack of improvements beyond those listed in OAR 660-046-0340.*

#### **4. Cottage Cluster Standards**

Staff received comments on the Division 46 minimum compliance standards regarding cottage cluster siting and design standards. Cottage clusters are a unique development type and require extra consideration of development feasibility in the drafting of minimum compliance standards. Comments received from the Advisory Committees, the City of Portland, and the Homebuilder's Association intend to make this development type more feasible in Large Cities.

The minimum and maximum number of cottages in a cluster development has been an ongoing discussion by advisory committee members. Staff have reiterated that the minimum compliance standards should not allow a Large City to institute an unreasonably high minimum number of units for each cottage cluster development. Likewise, the minimum compliance standards should provide guidance to Large Cities

on how many cottages should be allowed around a single common courtyard. Lastly, it is important to note that it is not necessary to provide parity between the number of cottages allowed on a lot or parcel compared to a triplex or quadplex. A developer could build as few as three units in a cottage cluster. It is important to create a framework where cities could provide this opportunity.

OAR 660-046-0205(4)(d) is amended as such (underlines show new language):

4. Pursuant to OAR 660-046-0205 through OAR 660-046-0230, the following numerical standards related to Middle Housing types apply:

[...]

d. Cottage Clusters –

- A. A Large City is not required to set a minimum number of dwelling units in a Cottage Cluster, but if it chooses to, it may require a minimum of three, four, or five dwelling units in a Cottage Cluster. A Large City may allow but may not require greater than five dwelling units in a Cottage Cluster.
- B. A Large City must allow up to eight cottages per common courtyard subject to applicable siting or design standards as provided in OAR 660-046-0220 through OAR 660-046-0235. Nothing in this section precludes a Large City from permitting greater than eight dwelling units clustered per common courtyard.

The Division 46 standards for cottage clusters state that a city “*may not apply lot or parcel coverage or floor area ratio standards to cottage cluster developments*”. The City of Portland has expressed concerns that the cottage cluster standards related to lot coverage and floor area ratio could lead to a scenario that would preclude the city from regulating cottage cluster development to ensure stormwater catchment and runoff mitigation. Here it is important to again note that this provision, as with any other provision in Division 46, does not impact the city’s ability to review, approve, approve with conditions, or deny a building permit on any number of factors, including due to insufficient stormwater detention and mitigation of the site due to development. Staff does not recommend changes to the Division 46 language on these grounds.

## 5. Performance Metric Approach Analysis

At the commission meeting in September, commissioners heard extensive testimony from stakeholders about the Performance Metric Approach during the public hearing. Generally, the comments could be organized into two categories: 1) a call for additional flexibility and clarity in the process that will allow cities the ability to regulate middle housing within their own context, and 2) a description of how processes that provide flexibility for local governments to further regulate middle housing are counter to the intent of HB 2001 and should be removed from the proposed rules altogether.

At the meeting in September, members of the commission generally agreed that the Performance Metric Approach, as a concept, was a workable solution to arguments on both sides. Commissioners were sensitive to the concept of providing local governments the opportunity to “right size” middle housing standards while remaining true to the intent of HB 2001 to increase housing options beyond what exists today.

To better refine the approach and ground the performance metrics, the commission asked staff to conduct an analysis of the approach in a few cities to determine if it was workable or if the percentages needed to be modified. Staff chose to analyze data from the cities of Albany and Beaverton. This analysis will give staff an idea of how the approach could be used to determine where middle housing is allowed in a city, based on both the minimum standards and the Performance Metric Approaches. The department appreciates both cities’ cooperation and assistance in the analysis.

The analysis began by collecting zoning, tax lot, goal protected and infrastructure constrained Geographic Information System (GIS) data. The first step was to identify all residentially zoned lots, then to remove lots and parcels within the 100-year floodplain and infrastructure constrained areas. The 100-year floodplain, a Goal 7 - Natural Hazards protected resource, was the only goal protected area that was removed from the analysis. Other goal protections allow a city to regulate, but not restrict the development of Middle Housing. The next step in the analysis is to remove Infrastructure Constrained Lands from the subset of lots and parcels. The City of Albany has a Residential Reserve zoning district where adding middle housing would be impossible, due to the lots being on well and septic, and a large portion of this zoning district is within the 100-year floodplain. The City of Beaverton did not identify any Infrastructure Constrained Lands to be removed.

The remaining subset of lots and parcels were the basis of further analysis. Using the minimum lot sizes in Division 46 (functionally 5,000 square feet for triplexes and 7,000 square feet for quadplexes and cottage clusters), the analysis can determine the “baseline” of lots where Middle Housing typically would be allowed under the minimum compliance standards. It can also identify the percentage of affected lots based on lot size, and how that relates to the percentages for each Middle Housing type identified in the Performance Metric Approach.

#### City of Albany Analysis

In the city of Albany, 86% of eligible residential lots are 5,000 square feet or larger, which corresponds to the minimum lot size for triplexes under Division 46. In the Performance Metric Approach, cities are required to allow triplexes on 80% of eligible lots or parcels.

Only 52% of the city of Albany’s eligible residential lots are 7,000 square feet or larger, the minimum lot size for quadplexes and townhouses in Division 46. In the Performance Metric Approach, 70% of lots are required to allow quadplex development. This is a

significant differential between the two approaches, and Albany would have a choice as to which approach to take regarding quadplexes.

In Division 46, Cottage Cluster development requires a minimum lot size of 7,000 square feet. The Performance Metric Approach requires a city to allow cottage clusters on 50% of lots. In Albany, 52% of eligible lots meet the 7,000 square foot minimum. This is very close to the required percentage in the Performance Metric Approach.

#### City of Beaverton Analysis

In the city of Beaverton, 83% of eligible lots are 5,000 square feet or larger. In the Performance Metric Approach, cities are required to allow triplexes on 80% of eligible lots or parcels.

Residential lots 7,000 square feet or larger, the minimum lot size for quadplexes and townhouses in Division 46, comprise 66% of the city's eligible lots. In the Performance Metric Approach, 70% of lots are required to allow quadplex. Unlike Albany, there is only a minor difference in results using the two alternative methods in Beaverton for both triplexes and quadplexes.

Cottage cluster development also requires a minimum lot size of 7,000 square feet in Division 46. If Beaverton chose to use the minimum standards, they would be allowing cottage clusters on 66% of their lots, vs. only 50% of lots under the Performance Metric approach. This is a significant difference in results.

#### Other Cities

Attachment J contains lot size data on most cities in Oregon that are classified as "Large Cities" and thus subject to these rules regarding middle housing. While department staff completed a more refined analysis for Albany and Beaverton, excluding lots in the 100-year floodplain and infrastructure-constrained lots, the percentages in each city changed very little from the base percentages in Attachment J, which did not exclude floodplain and infrastructure-constrained lots. For Albany, this represented a change from 88% to 86% of lots greater than 5,000 square feet; change from 56% to 52% of lots greater than 7,000 square feet. Thus, staff concludes that we can reasonably use and analyze the data in Attachment J as a proxy for the other cities surveyed to determine the individualized differences between the Performance Metric and Minimum Lot Size Approaches as it regards triplexes, quadplexes, and cottage clusters.

The following table is a comparison for different cities, based upon the information in Attachment J:

<p><b><u>Albany:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 88%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 56%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 56%</p>	<p><b><u>Bend:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 85%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 58%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 58%</p>
<p><b><u>Corvallis:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 84%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 66%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 66%</p>	<p><b><u>Eugene:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 90%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 68%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 68%</p>
<p><b><u>Fairview:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 97%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 91%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 91%</p>	<p><b><u>Gladstone:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 94%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 66%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 66%</p>
<p><b><u>Grants Pass:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 91%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 77%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 77%</p>	<p><b><u>Gresham:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 95%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 79%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 79%</p>
<p><b><u>Keizer:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 93%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 62%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 62%</p>	<p><b><u>Happy Valley:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 92%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 78%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 78%</p>

<p><b><u>Lake Oswego:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 93%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 85%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 85%</p>	<p><b><u>McMinnville:</u></b> Triplex: Performance Metric: 92% Lot Size over 5,000SF: 85%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 70%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 70%</p>
<p><b><u>Medford:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 94%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 77%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 77%</p>	<p><b><u>Milwaukie:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 94%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 71%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 71%</p>
<p><b><u>Oregon City:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 92%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 74%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 74%</p>	<p><b><u>Portland:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 77%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 41%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 41%</p>
<p><b><u>Redmond:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 93%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 62%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 62%</p>	<p><b><u>Salem:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 87%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 56%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 56%</p>
<p><b><u>Springfield:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 94%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 61%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 61%</p>	<p><b><u>Troutdale:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 93%</p> <p>Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 80%</p> <p>Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 80%</p>
<p><b><u>Washington County (unincorporated):</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 81%</p>	<p><b><u>West Linn:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 96%</p>



Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 64%	Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 80%
Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 64%	Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 80%
<b><u>Wilsonville:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 89%	<b><u>Wood Village:</u></b> Triplex: Performance Metric: 80% Lot Size over 5,000SF: 99%
Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 60%	Quadplex: Performance Metric: 70% Lot Size over 7,000SF: 84%
Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 60%	Cottage Cluster: Performance Metric: 50% Lot Size over 7,000SF: 84%

In summary:

For triplexes, 23 of the 24 cities would allow triplexes on more lots under the Minimum Lot Size approach. Only Portland would allow triplexes on more lots under the Performance Metric approach.

For quadplexes, 12 of the 24 cities would allow quadplexes on more lots under the Minimum Lot Size approach, while 12 would allow quadplexes on more lots under the Performance Metric approach.

For cottage clusters, 23 of 24 cities would allow cottage clusters on more lots under the Minimum Lot Size approach. Only Portland would allow cottage clusters on more lots under the Performance Metric approach.

**Three Proposed Performance Metric Approaches for Commission Consideration**

*Option 1: Leave the Performance Metric Approach standards for middle housing type allowances as-is. 80% for triplexes, 70% for quadplexes, 60% for townhouses, and 50% for cottage clusters.*

*Option 2: Leave the Performance Metric Approach standards for middle housing type allowances as-is for triplexes at 80%, quadplexes at 70%, townhouses at 60%, and increase cottage clusters from 50% to 70% to match the Performance Metric percentage for quadplexes.*

*Option 3: Alter the Performance Standards Approach standards for middle housing type allowances to reflect the existing percentages of lots that are 5,000 square feet and over for triplexes (86% in Albany and 83% in Beaverton) and*

*7,000 square feet and over for quadplexes and cottage clusters (52% in Albany and 66% in Beaverton).*

The Performance Metric Approach, as written, gives cities the ability to choose to apply the Performance Metric percentages to one or more Middle Housing types. The Performance Metric Approach requires additional considerations not related to lot size or maximum, where analysis of Middle Housing allowances are subject to the “equitable distribution” check as described in OAR 660-046-0205(3)(b)(F).

As an example, a sample city could choose to regulate the minimum lot size of cottage clusters in conjunction with the allowable minimum compliance standards but could choose to regulate the minimum lot size for quadplexes differently subject to the Performance Metric Approach. In this case, the sample city would be choosing to utilize the Performance Metric Approach only for quadplexes and not for cottage clusters. For quadplexes, the sample city would be required to show that quadplexes are allowed on 70% of eligible lots (while also meeting the “equitable distribution” test as provided in OAR 660-046-0205(3)(b)(F)). The sample city would not need to do this same analysis for cottage clusters because they are choosing to utilize the minimum lot size acceptable in the minimum compliance standards of Division 46.

Option 1 maintains this underlying structure of the Performance Metric Approach. It gives cities the ability to allow various housing types at the “high end” or “low end” of the acceptable ranges within either the Performance Metric or the Minimum Lot Size approach to reflect local policy preferences. However, for both approaches, a majority, and in most cases a substantial majority, of lots would accommodate triplexes and quadplexes (except the City of Portland, which has already adopted a high standard regulating Middle Housing through the Residential Infill Project). Additionally, the Performance Metric approach under this option would be relatively administratively easy to measure on an ongoing basis, as prescribed in the proposed rules.

Option 2 (recommended option): This option maintains the Performance Metric Approach as described in Option 1, but increases the acceptable Performance Metric percentage for cottage cluster allowances from 50% to 70%. The increase is related to the correlation of the minimum lot size of 7,000 square feet for both quadplexes and cottage clusters in the minimum compliance standards of Division 46. The functional difference, in terms of space and developable land needed for all required site features, between a detached quadplex development and a cottage cluster development of three to five units seems to be marginal.

The department’s analysis of eligible lots in both the city of Albany and the city of Beaverton highlighted a potential policy deficiency in the existing Performance Metric Approach: if a detached quadplex can be built on a 7,000 sf lot, given the footprint limitations and design efficiencies inherent cottage cluster developments, it is likely that there is a similar potential that a property owner could develop a cottage cluster on that same 7,000 sf lot. Consequently, there may be limited justification to establish an

allowable Performance Metric percentage for cottage cluster that is different from the allowable Performance Metric percentage for quadplexes. Because of this, staff recommends altering the Performance Metric percentage for cottage clusters from 50% to 70%.

If the commission intends to maintain the existing tiered Performance Metric Approach, the decision between Option 1 and Option 2 represents a policy decision on the parity or overlap between where Large Cities could and should allow quadplex and cottage cluster developments.

Option 3 moves away from the existing tiered Performance Metric Approach. Option 3 would be more precisely equitable in balancing the Performance Metric and Minimum Lot Size approaches for a city. Instead of allowable Performance Metric percentages that tier from “triplexes allowed on 80% of lots and parcel, quadplexes allowed on 70% of lots and parcels, etc”, Option 3 would instead peg the acceptable Performance Metric percentages to the existing percentages of eligible lots of 5,000 sf and 7,000 sf. In this option, the city knows precisely the “target” percentage of lots that need to accommodate triplexes, quadplexes, and cottage clusters.

Using the City of Albany and Beaverton analysis, Option 3 would functionally change the acceptable Performance Metric percentage for triplexes from 80% to 86% (Albany) and 83% (Beaverton) – the city-specific percentages of eligible lots 5,000 sf or larger. For quadplexes and cottage cluster, Option 3 would functionally change the acceptable Performance Metric percentage from 70% (quadplexes) and 50% (cottage clusters) to 52% in Albany and 66% in Beaverton.

The advantages of this option is first that it removes the issue in the existing issue where, in some cases, the minimum compliance standards would allow less Middle Housing compared to the Performance Metric Approach (as described in the previous section). Secondly, it ensures that, at a minimum, cities are required to achieve at least the same amount of middle housing allowances as is acceptable under the minimum compliance standards. This is also the disadvantage of this approach, in that it would significantly limit city flexibility in making the decision as to where to allow various types of middle housing units.

### Consideration of Options

The question raised by comparing Option 1, 2, and 3 is one of policy: is the additional flexibility provided by Option 1 and 2, which will vary among cities based upon their existing residential characteristics, too great? The department comes to the conclusion that it is not too great, at least regarding triplexes and quadplexes. While all but one city surveyed would allow more triplexes under the Minimum Lot Size standard than under the Performance Metric standard, the base percentage of the former, 80%, is very high to begin with. For quadplexes, the fact that half of the cities surveyed would allow more quadplexes under the Minimum Lot Size standard and half would allow more

quadplexes under the Performance Metric standard would indicate that the 70% base percentage of the former is a reasonable median number, and in all but one city surveyed (Portland for the minimum lot size alternative) more than half of the city's lower density residential lots would allow quadplex development.

Cottage Clusters present an interesting issue: in all but one city the percentage of lots allowing cottage clusters would be greater, in some cases significantly greater, under the Minimum Lot Size standard vs. the Performance Metric standard. Staff does not believe there is a legitimate policy reason for cities to be allowed the flexibility to place greater limits on cottage cluster development as compared to quadplexes, and therefore recommends the commission adopt Option 2.

## **6. Alternative Siting and Design Standards**

DLCD recognizes that some cities across the State have already been active in encouraging the development of middle housing, even before HB 2001 was passed into law. These existing development code standards and incentives may or may not be in compliance with Division 46. Rather than adjusting the rules to suit a select suite of existing provisions, staff, with the guidance of Advisory Committee members, have constructed the Alternative Siting and Design Standards. This section is intended to allow Large Cities the ability to prove that their existing standards are producing a substantial amount of middle housing already and the Large City should therefore be able to continue using those standards.

OAR 660-046-0235(1) establishes a test for Large Cities to show that existing siting or design standards have resulted in the "substantial production" of Middle Housing in areas where the standard has been applied. OAR 660-046-0235(2) establishes a second test for Large Cities to show that other siting or design standards, other than what is already provided in Division 46, do not cause unreasonable cost or delay to the development of middle housing.

### Definition for Siting and Design Standards

Staff has developed this approach to give jurisdictions more flexibility in how to apply siting and design standards without causing unreasonable cost or delay. However, a consequence of that flexibility is needing more clarification as what is a "siting" vs. a "design" standard, as each is now regulated separately in the rules. Defining these terms more clearly delineates how standards will be regulated, especially if they fall outside of the categories of standards identified in rule. Each term is defined briefly and includes examples of what is considered a "siting" or a "design" standard:

1. *"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.*

2. *“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.*

### Measuring Substantial Production

OAR 660-046-0235 was developed to avoid penalizing jurisdictions that have adopted land use regulations that allow middle housing, provided the jurisdiction can demonstrate some reasonable threshold of Middle Housing production. However, RAC members have had significant discussion regarding the correct approach for the provision regulating existing alternative siting or design standards outlined in OAR 660-046-0235(1). The primary intent of this standard is to better accommodate cities that have already adopted workable middle housing development provisions prior to the passage of HB 2001.

To suit that intent, the standard must be written narrowly, such that a standard applied to middle housing may *only* apply to that middle housing type in the areas where it currently applies if the jurisdiction can demonstrate 3% production of the applicable middle housing type in that area over at least a two year timeframe. The city may not apply that standard citywide.

Department staff also responded to a point raised by the City of Hillsboro staff who expressed interest in utilizing design standards that had undergone significant public process to other zones. Because Division 046 limits design standards to the Model Code or standards that apply to single-family detached dwellings, early adopters have limited options to continue the application of design standards they have worked to develop or use them in other zones. DLCD staff was concerned that applying these standards flatly across many zoning districts had the potential to cause unreasonable cost or delay. Accordingly, staff have drafted the provision to allow the application of only design standards to other zones where any standards that scale by dwelling unit (e.g. minimum open space requirements) scales proportionately by the minimum lot size of the underlying zone. Existing siting standards such as building setbacks, open space requirements, or similar standards that produce substantial production of middle housing cannot be expanded outside of existing areas and cannot be expanded to other zoning districts.

In other words, the way the rule is currently constructed allows a city to apply design standards to other middle housing types in the city – such as open space or façade regulations, but *does not permit a local jurisdiction to apply siting standards such as*

*parking, setbacks, minimum lot size, maximum density, height, bulk, scale, coverage, or similar to Middle Housing citywide.*

Opposition to Proposed OAR 660-046-0235 Alternative Siting and Design Standards and Proposed Alternative Rules

Staff has heard many concerns about the original provision in OAR 660-046-0235, including:

- The metric does not accurately reflect anticipated development as outlined in House Bill 2001 (3% middle housing development expectation over twenty years). It compares Middle Housing building permits to single-family building permits, which can vary significantly annually, punish jurisdictions with strong housing markets, and reward jurisdictions with relatively weak housing markets;
- An inaccurate metric can result in the effective undermining of parameters of Administrative Rules, especially those related to siting, which have direct and well-documented impacts on housing feasibility and affordability. Additionally, such standards would be “locked in place” after the initial determination;
- The metric was not intended by the Legislature to be utilized as a “safe harbor” for acceptable Middle Housing development, and providing a safe harbor removes a core functional component of House Bill 2001 in which unreasonable standards can be challenged through appeal; and
- Many of the jurisdictions the standard was seeking to accommodate are not able to utilize the standard, including the City of Bend, due to significant single-family detached development and the City of Portland with a limited time frame to demonstrate “substantial production” due to only recently adopting the Residential Infill Project (2020).

To address these, department staff have prepared a series of alternatives for commission consideration. Specific rule language with revisions is included in Attachment L.

Option 1 revises the rule language to incorporate the following changes:

1. Changes to the “substantial production” metric to better reflect an expectation for 3% production of Middle Housing over a twenty-year time horizon. Because most standards have been applied for less than twenty years, the percentage would be an annualized fraction of 3% based on the length of time the particular standard has been effective. Additionally, the metric now looks at the totality of an area, rather than the building permits for that particular year;
2. Establishes a routine check-in of “substantial production” similar to that of the check-in period established for the Performance Metric Approach in OAR 660-046-0205(3)(b);
3. Limits the application of siting standards, ensuring that the bar to meet is high and that standards cannot be applied in areas that are not already subject to the particular standard.

4. Provides an option for early adopters to “test” their design standards, with the expectation that they meet the more rigorous definition of “substantial production” at a designated check-in period. This allows for an iterative approach in which design standards that facilitate good housing outcomes can be incorporated into the Model Code, and will provide a longer time period to better understand the full scope of unreasonable cost or delay from design standards.

The outcome of this option is that early adopters will be able to continue application of siting standards in areas where they meet “substantial production”, or at least 3% of the applicable middle housing type over twenty years. They will also be able to retain and expand design standards to other zones without meeting the initial threshold to “test” them over a period of time, with an expectation that design standards either 1) achieve substantial production, 2) are incorporated into the Model Code, or 3) sunset over time.

Option 2 includes revisions listed above, but removes the provision allowing for the continued application of siting standards. This option retains the provision that allows for flexibility and continued dialogue for design standards with future expectations to achieve meaningful results, but it will remove the ability for early adopters to continue application of siting standards that are not in compliance with Division 046. Department staff recommends this option.

Option 3 removes OAR 660-046-0235(1). The outcome of this option is that all early adopters will be required to meet minimum compliance for siting and design standards outlined in Division 046, or demonstrate that their siting or design standard(s) do not cause unreasonable cost or delay as provided in OAR 660-046-0235(2).

Department staff seek confirmation on which option the commission feels should be adopted into OAR 660-046-0235. Department staff recommend adopting Option 2.

#### **D. CHANGES TO THE LARGE CITIES MODEL CODE**

Department staff has received fewer public comments and testimony related to the Large and Metro Cities Model Code than the rest of Division 46. Comments received were mostly related to a need for further clarity of standards or minor adjustments to how the standards operate. Staff received written letters on the model code from the City of Portland and the Oregon Homebuilders Association.

A comment received from the Homebuilder’s Association requested allowing an exemption in building square footage for an attached garage. The definition of “building footprint” in the draft Model Code states that attached garages and carports are included in the building footprint calculation (which only applies to cottage clusters). The Homebuilder’s Association recommended that up to 400 square feet of attached garage space be exempted from the 900 square feet footprint limit mandated by HB 2001. The argument hinged on that by including garage floor area in the footprint calculation it would excessively limit the remaining floor area that is available for living space.

Staff is proposing to exempt up to 200 square feet of attached garage/carport space from the maximum building footprint, but still include it in the overall floor area calculation. Two hundred square feet is equivalent to a 1-car garage (10 ft by 20 ft). Given the footprint limitation, this would provide a bit more flexibility for inclusion of a modest garage. We recommend continuing to include garage area in the total floor area calculation, for the purpose of calculating average unit size in a cottage cluster. The total floor area of the cottage would still be subject to the maximum average unit size of 1,400 square feet for the overall cottage cluster.

Related, department staff also recommend placing some limits on detached garages and accessory structures, as suggested in comments from the City of Portland. Currently, the draft Model Code does not limit the size of detached garages, sheds, or other accessory structures. Since the draft Model Code does not limit floor area ratio (FAR) or lot coverage for cottage clusters, this creates opportunities for excessively large accessory structures. The code could set an absolute limit on the floor area, and possibly height, of these structures, or could include them in the cottage floor area (but not footprint) calculation.

## **E. OFF-STREET PARKING**

At the meeting on September 25, 2020, staff presented members of the commission seven major rulemaking highlights, one of which was off-street parking. Commissioners did not give staff any additional guidance with respect to the approach recommended by staff. Commissioner Lelack expressed concern that cities may not have the ability to require enough off-street parking. Staff have since met with Commissioner Lelack to explain the reasoning behind the draft rules as written.

Committee discussions regarding off-street parking highlighted the need to balance the impact of off-street parking requirements and middle housing development viability. Zoning codes that require too many off-street parking spaces cause an unreasonable cost and delay to the development of middle housing.

Another consideration in the parking discussion was the difference between appropriate Large Cities Model Code standards and the minimum compliance standards in Division 46.

The DLCD staff team conducted an extensive literature review to better understand the costs of accommodating off-street parking spaces within middle housing developments. While there is limited specific literature on parking in conjunction with middle housing, there is a plethora of information that provides insight into how minimum parking requirements affect housing development. To summarize this information succinctly - minimum parking requirements substantially increase the costs of housing and development both directly and indirectly.



The cost imposed by minimum parking requirements is several thousand dollars per space for surface parking and more for garage or covered spaces. Households that bear the costs imposed by minimum parking standards are disproportionately renter and lower-income households as well as households with fewer vehicles. Furthermore, such requirements place a cost on housing development that results in fewer units produced, especially for smaller and more affordable housing types.

Furthermore, Governor Brown’s Climate Executive Order 20-04 directs the Department to “exercise any and all authority and discretion vested in them by law to help facilitate Oregon’s achievement of the greenhouse gas emissions reduction goals set forth in paragraph 2 of this Executive Order”. There is a correlation with minimum parking standards and increased automobile mode share, and evidence that greater minimum parking standards are a cause, in addition to a symptom, of increased automobile mode share.

Given all of these factors, off-street parking requirements clearly play a major role in the overall development cost of housing, and especially middle housing. Additional costs incurred during the development of housing are passed on to the eventual occupant of that housing, making it less affordable.

Committee concerns remained over where residents would park their vehicles if off-street parking requirements were reduced or eliminated. Research shows that, when left to market conditions, developers typically provide some degree of off-street parking if their market analysis shows the need for it – even without the presence of off-street parking requirements. In cities like Seattle and Portland, where a smaller percentage of all households have vehicles, where the value of buildable land is high, and where off-street parking requirements have been reduced or eliminated, developers continue to provide some off-street parking spaces. In Seattle, about 70% of developments with no city-required parking included off-street parking spaces. In Portland, developers of multi-family housing in walkable areas well served by transit provide an average of 0.7 off-street parking spaces per unit in their development plans. Similarly, in Eugene, developers in downtown report that the lenders generally require developments to include off-street parking for marketability and financial viability reasons. In Corvallis, developers of new edge developments often exceed the city’s mandated parking ratios. And in Salem, multi-family developers recently testified they would provide 1.75 spaces per unit even when off-street parking requirements were reduced or eliminated. The point of the department’s recommendation on this issue is that provision of off-street parking should be a decision made by a project developer based upon the needs of the project, not a mandated city requirement.

## **F. FISCAL IMPACT STATEMENT / HOUSING IMPACT STATEMENT**

The changes to the proposed rules as outlined above do not alter or change the Fiscal and Housing Impact Statements that were provided to the commission as part of its most recent meeting in September.

The statements are provided for commission review in Attachment C of this Agenda Item.

## **G. RECOMMENDED ACTION**

The department recommends that the commission:

- 1) Review the proposed changes to administrative rules (660-046) and the proposed changes to Large Cities Middle Housing Model Code;
- 2) Consider the input of the rulemaking advisory committee and its technical advisory committee;
- 3) Consider public comment on the draft rules, draft model code, and associated fiscal and housing impact statements provided in conjunction with both the September 2020 commission meeting and this meeting;
- 4) Provide the department direction regarding any questions or issues for which the commission needs further information in order to make a final decision;  
and
- 5) Adopt the proposed administrative rules and large cities middle housing code, with appropriate amendments, as necessary.

### **Sample Motions for Adoption:**

*“I move that the Land Conservation and Development Commission adopt Oregon Administrative Rule Chapter 660, Division 46, including the Large Cities Middle Housing Model Code and minimum compliance standards, as drafted in Attachments A and B of Agenda Item 4.”*

*“I move that the Land Conservation and Development Commission adopt Oregon Administrative Rule Chapter 660, Division 46, including the Large Cities Middle Housing Model Code and minimum compliance standards, as drafted in Attachments A and B of Agenda Item 4 with the following amendments....”*

**IV. ATTACHMENTS**

- A. ENROLLED HOUSE BILL 2001**
- B. PROPOSED MIDDLE HOUSING OREGON ADMINISTRATIVE RULES (660-046)**
- C. PROPOSED LARGE CITIES MIDDLE HOUSING MODEL CODE**
- D. FISCAL IMPACT STATEMENT / HOUSING IMPACT STATEMENT**
- E. RULEMAKING ADVISORY COMMITTEE SUMMARIES**
- F. MIDDLE HOUSING TECHNICAL ADVISORY COMMITTEE SUMMARIES**
- G. COMMUNITY CONVERSATIONS ON HOUSING SUMMARIES**
- H. WRITTEN COMMENTS RECEIVED ON HOUSE BILL 2001**
- I. MIDDLE HOUSING DEVELOPMENT FEASIBILITY ANALYSES**
- J. ANALYSIS OF LOT SIZES IN LARGE AND METRO CITIES AND COUNTIES**
- K. ALTERNATE OPTIONS FOR OAR 660-046-0205(3)(B) – THE PERFORMANCE METRIC APPROACH**
- L. ALTERNATE OPTIONS FOR OAR 660-046-0235 – ALTERNATIVE SITING AND DESIGN STANDARDS**
- M. ROSTER OF RULES ADVISORY COMMITTEE (RAC) MEMBERS**
- N. ROSTER OF MIDDLE HOUSING CODE TECHNICAL ADVISORY COMMITTEE (MCTAC) MEMBERS**