



STAFF REPORT TO THE PLANNING COMMISSION

To: Clackamas County Planning Commission
From: Martha Fritzie, Principal Planner
Date: March 21, 2022
RE: File ZDO-282: *Land Use Housing Strategies Project (LUHSP) Phase 2 – House Bill 2001 (HB2001) Implementation*

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BACKGROUND

The Land Use Housing Strategies project (LUHSP) includes three phases of work to consider amendments to the county's Zoning & Development Ordinance (ZDO) to expand zoning opportunities to provide more opportunities for housing development in unincorporated Clackamas County. Collectively, if approved, the amendments will provide more residential development opportunities for property owners throughout most of the urban unincorporated area.

Phase 2 of the LUHSP contains primarily amendments that are needed to comply with House Bill 2001 (HB2001), a bill from the 2019 Oregon Legislature that mandates jurisdictions, including Clackamas County, allow people to build middle housing -- duplexes, triplexes, quadplexes, cottage clusters, and townhomes -- in urban areas zoned for single-family detached housing. In unincorporated Clackamas County, these requirements will apply to properties in urban zoning districts R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, VR-5/7, and VR-4/5.

While the county has some choice on the specific regulations that will apply to middle housing, the county does *not* have a choice on whether to implement HB2001.

- The county is *required* to adopt standards consistent with HB2001 by June 30, 2022.
- If the county does not adopt its own code changes to comply with HB2001 by that date, the state's *Middle Housing Model Code* will automatically apply.

The county could choose to do nothing and wait for the *Model Code* to apply, but this decision would not be without implications. For example, applying the *Model Code* would mean:

- The county could not require a developer to provide any off-street parking for duplexes;
- The county would have to allow:

- minimum parking requirements for other middle housing types of less than 1 space per dwelling unit, in some cases;
- on-street parking to count toward the required parking minimums;
- middle housing to be built closer to some property lines than single-family homes; and
- no minimum lot size for any types of middle housing.

As such, in 2021, both the Planning Commission and Board of County Commissioners directed Planning staff to develop amendments to the county's ZDO to implement HB2001 rather than simply accept the *Model Code*.

Developing Amendments for ZDO-282

To develop these amendments, the county must stay within the minimum standards established by the state in the Oregon Administrative Rules (OAR 660, Division 46) and may use standards found in the state's *Middle Housing Model Code*.

Generally, this means that the county has:

- No control over what, how, and where middle housing types must be allowed in the urban area, and
- Limited control over certain siting and design standards for some middle housing, as long as those standards do not result in unreasonable cost or delay in the development of middle housing. To meet the “do not result in unreasonable cost or delay” standard, the regulations must be the same (or less restrictive than):
 - a. those for a single-family dwelling;
 - b. what is included in *the Middle Housing Model Code*; or
 - c. what is included in the OARs for “minimum compliance” with each standard.¹

Ordinance ZDO-282 contains the amendments to the county's ZDO that are needed to implement HB2001 and also contains other minor amendments related to housing, including those needed to allow for middle housing land divisions (compliant with Senate Bill 458 [2021], SB458). The amendments related to middle housing utilize standards from all three of the above options (a, b, and c) – combined and edited to best incorporate it into the existing structure of the ZDO - and incorporates a sizeable amount public feedback in order to find ways to best fit middle housing into the county's urban neighborhoods.

ZDO-282 also includes amendments to the county's' Comprehensive Plan to enable the middle housing zoning code amendments. The Comprehensive Plan updates are focused on Chapter 6, *Housing*, which contains the goals and policies to guide housing-related standards in the ZDO. This chapter is outdated and long overdue for an update. Chapters 4, *Land Use* and 10, *Community Plans and Design Plans* are also amended to ensure there are no inconsistencies or barriers to the implementation of HB2001.

There will be at least two public hearings on this proposal: one before the Planning Commission on Monday, March 28, and another before the BCC currently scheduled for Wednesday, April 27. The Planning Commission provides a recommendation to the BCC, who would ultimately decide whether the ordinance is adopted.

¹ While the OARs also allow for a jurisdiction to develop “alternative siting and design standards,” staff did not recommend this approach and the PC and BCC concurred, largely due to its limitations and to the complicated and prohibitive nature the required analysis that would need to accompany this option.

PROPOSAL

ZDO-282 proposes text amendments to Comprehensive Plan Chapter 4, *Land Use*, Comprehensive Plan Chapter 6, *Housing*, Comprehensive Plan Chapter 10, *Community Plans and Design Plans*, and to 21 separate sections of the ZDO². The amendments are included with a brief summary of each section in ***Attachments A and B***.

The proposed amendments will generally accomplish the following **five actions**.

1. Allow duplexes, triplexes, quadplexes, townhouses, and cottage clusters (middle housing) in urban low-density residential areas, and identify development and design standards that apply to this middle housing.

The amendments proposed in ZDO-282 include changes that are needed to allow middle housing in urban low-density residential areas and identify the development standards for such middle housing and would:

- Add new definitions for middle housing types and specify where they are allowed outright.
- Add a new ZDO section – Section 845, *Triplexes, Quadplexes, Townhouses, and Cottage Clusters*– with siting and design standards that are unique to triplexes, quadplexes, townhouses, and cottage clusters in zones affected by HB2001. This includes general standards -- minimum lot sizes for triplexes, quadplexes and cottage clusters -- and standards specific to each type of middle housing including entry orientation, driveway regulations, windows, cottage cluster courtyard regulations, and others.
- Establish a minimum lot size of 5,000 square feet for the development of triplexes and 7,000 square feet for quadplexes and cottage clusters. Under the HB2001 rules, larger minimum lot sizes would be allowed if certain “performance standards” were met, but the county’s land supply does not meet those standards. Therefore, the proposal includes the largest minimum lot sizes that can be established under the state’s rules.
- Establish a maximum density for townhomes that is three or four times the density for single-family homes (depending on zoning district). These densities meet the requirements allowed under the state’s rules.
- Establish minimum parking requirements at the highest level allowed under the state’s rules: one parking space per dwelling unit.
- Prohibit the development of middle housing without public sewer service, except for duplexes that meet certain exceptions allowed for detached single-family dwellings in the urban area.
- Retain existing requirements and exemptions for sidewalk construction, which will mean that sidewalk construction will be required for middle housing with four or more units, whereas the option to pay a fee-in-lieu-of (FILO) sidewalks that is currently available to single-family dwellings and other development with three or fewer dwelling units will continue.
- Keep other infrastructure requirements for middle housing the same as for a detached single-family dwelling.

² Each specific ZDO section proposed to be amended is listed in the “List of Attachments” section, found on page 18 of this report.

2. Remove the 3,000 square foot minimum lot size for residential development.

Currently the ZDO requires a lot be at least 3,000 square feet (in most zoning districts) in order for development of a dwelling to be approved. This requirement means that if an existing, legally-established lot happens to be smaller than 3,000 square feet, it cannot be developed with a dwelling, even if the development could meet all other applicable development standards. In the county's urban area there are a number of older, platted lots that are 25 feet x 100 feet (2,500 square feet). For these lots to be developed, owners have had to develop two or more lots with a single dwelling or replat lots (e.g., reconfigure four platted lots into three)— both options that cost property owners time and money.

ZDO-282 would to remove the 3,000-square-foot minimum lot size for residential development and instead let the applicable development standards (setbacks, lot coverage, parking, etc.) determine what can be built on a lot. There are three reasons for this proposal:

- The 3,000-square-foot minimum lot size has been in the county's zoning code for decades and current staff has found no evidence pointing to the rationale behind its original inclusion. Staff is aware that this rule creates more expense and inconvenience for property owners wanting to develop.
- In 2019, the legislature passed Senate Bill 534, which requires certain jurisdictions to allow the development of at least one dwelling on each platted lot that is zoned for a single-family dwelling, regardless of the size of the platted lot. While an argument can be made that this legislation does not apply to the county's urban unincorporated areas, the language is unclear.
- The rules for HB2001 specify that a duplex must be allowed "*on any property zoned to allow detached single-family dwellings, which was legally created prior to the [jurisdiction's] current lot size minimum for detached single-family dwellings in the same zone.*" Staff interprets this provision to mean that the 3,000-square-foot minimum lot size cannot be applied to a duplex, and if a duplex is allowed, staff believes it does not make sense to continue to prohibit the development of a detached single-family dwelling.

3. Simplify the maximum lot coverage requirements in urban low density residential zoning districts.

Currently the amount of the lot that may be covered with structures in urban, low-density residential districts is somewhat complicated:

- In the R-2.5, R-5, VR-4/5, and VR 5/7 zoning districts, up to 50% of a lot may be covered.
- In the R-7 through R-30 districts, up to 40% of a lot may be covered, *except*:
 - If the lot is an existing lot of record that is smaller than 6,000 square feet and was created prior to current zoning, then 50% may be covered; or
 - If the lot will be developed with a townhouse, then 50% may be covered.
- And in any of the above zoning districts, if the lots are part of a Planned Unit Development (PUD), they have a maximum lot coverage of 65%.

ZDO-282 proposes to simplify the lot coverage requirements in the R-7 through R-30 zoning districts to eliminate the need for most of the exceptions and simply allow for a 50% maximum lot coverage on any lot in those zoning districts.

The exception for lots within a PUD would remain; PUD lots are generally smaller than what the underlying zoning district allows because a PUD includes common area tracts in lieu of larger lots and individual yards.

4. Allow and identify standards for middle housing land divisions.

In 2021, the Oregon Legislature passed Senate Bill 458 (SB458), which requires that any jurisdiction subject to the requirements of HB2001 also allow the division of land that has or is proposed to have middle housing (duplexes, triplexes, quadplexes, townhouses, cottage clusters) that is developed consistent with the HB2001 regulations. With a middle housing lot division, a jurisdiction may include certain limitations such as prohibiting further division of the lots or prohibiting accessory dwelling units on the resulting lots.

Although SB 458 does not require local governments to amend their development codes or comprehensive plans, the county has chosen to incorporate the middle housing land division requirements of SB 458 as part of the proposed ZDO amendments, because it is easier for staff to implement from the ZDO, rather than apply state law directly. These amendments would prohibit further division of lots created through a middle housing division and prohibit accessory dwellings on the resulting lots.

5. Repeal design standards specific to manufactured dwellings.

Currently manufactured homes that are to be placed individually on a property (not in manufactured dwelling parks) must have at least 700 square feet of living space if within the rural area and 1,000 square feet of living space if within the urban area. These manufactured dwellings are also subject to a number of standards, like a requirement for a garage or carport, that are not required for other dwellings and that can add significant expense to the placement of the home.

ZDO-282 proposes to repeal Section 824, *Manufactured Dwellings*, which contains these requirements for two reasons:

- The 2022 Oregon legislature recently passed a bill (House Bill 4064) that would prohibit jurisdictions from having such standards for manufactured dwellings. Assuming the bill is signed by the Governor, including these amendments with this package will be more efficient than addressing them later; and
- The existing standards for manufactured dwellings can create cost barriers to providing them as a more affordable housing option.

Removing these standards would mean that manufactured dwellings would be subject to the same standards as detached, single-family dwellings. In addition, removing the minimum size for manufactured dwellings in the urban area would effectively allow them to be accessory dwelling units or dwellings in a cottage cluster, to the extent that it could meet all of the applicable development standards for those types of dwellings.

PUBLIC NOTICE & COMMENTS

Notice of the proposed amendments in ZDO-282 was sent to:

- All County Community Planning Organizations (CPOs) and Hamlets;
- Oregon Department of Land Conservation & Development (DLCD), Metro, Oregon Department of Transportation (ODOT), and other interested agencies; and
- An interested parties list, specific to this planning project, which contains over 400 contacts.

Notice was also published in the newspaper and was the subject of several press releases and social media posts. To date, Planning and Zoning has received seven written comments from members of the public or other agencies (**Attachment D**).

ANALYSIS & FINDINGS

The proposed Comprehensive Plan and ZDO text amendments are legislative in nature and are subject to the relevant Statewide Planning Goals, Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OARs), the Metro Urban Growth Management Functional Plan (UGMFP), County Comprehensive Plan policies, and procedural standards identified in the county's Zoning & Development Ordinance (ZDO). Compliance with the relevant portions of each is discussed in subsections 1 through 5, below.

1. Statewide Planning Goals:

This section of the report includes findings on the consistency of ZDO-282 with Statewide Planning Goals.

- a. **Goal 1 – Citizen Involvement:** Goal 1 calls for “the opportunity for citizens to be involved in all phases of the planning process” and requires the County to have a citizen involvement program with certain features.

ZDO-282 does not propose to change the *Citizen Involvement* chapter (Chapter 2) of the County's Comprehensive Plan. ZDO Section 1307 implements policies of Comprehensive Plan Chapter 2, and contains adopted and acknowledged procedures for citizen involvement and public notification of land use applications. Notice of ZDO-282 has been provided consistent with the requirements of Chapter 2 and Section 1307, including to all Community Planning Organizations, DLCDC, other agencies, and a sizeable list of interested parties. Notice of the Planning Commission and Board of County Commissioner's hearings were published in the newspaper, advertised through social media, and press releases issued. Before a final decision on ZDO-282 can be made, there will have been at least two public hearings: one before the PC and another before the BCC.

Public Outreach

In addition to meeting the minimum requirements for compliance with Goal 1, the county engaged in public outreach activities specifically related to middle housing in urban unincorporated Clackamas County. Widespread outreach conducted throughout unincorporated areas via traditional methods such CPO meetings, mailing lists and an online open house were augmented and enhanced by specific, targeted efforts to inform and engage multicultural members of our community.

The multicultural outreach utilized a consultant with staff and independent contractors who routinely worked in the identified communities. They used their networks to establish and lead focus groups of Clackamas County residents from these communities in the language spoken by the participants. The liaison for each community was able to communicate in the appropriate language and translate comments, questions and answers between focus group members and county staff, allowing for meaningful dialogue between staff and community members that would otherwise not have been possible. A more detailed summary of the multicultural outreach is found in **Attachment C**.

Highlights of the public engagement efforts include:

- Two online surveys to assess opinions about specific aspects of middle housing. This surveys were available in five languages: English, Spanish, Vietnamese, Russian, and Chinese. Notice of the surveys was directly sent to people on the project's interested parties list, and was publicized through the news media, on social media and on the project webpage (www.clackamas.us/planning/hb2001). The first survey

received a total of 522 responses and the second received 342 responses. Responses for both surveys were received in all five languages.

- Discussion group meetings with multicultural communities including:
 - Focus groups conducted in five languages -- Chinese, Vietnamese, Russian, Spanish, and English. The discussions allowed participants to learn about HB 2001 in their primary language and consider the areas of flexibility.
 - A community feedback panel held in English allowed a diverse group of people from many different backgrounds to learn and have in-depth conversations about HB2001 and the potential impact to their neighborhoods.
- A virtual Q&A session, in which county staff gave a brief presentation about middle housing and gave the public the opportunity to ask questions about the topic. Approximately 21,500 postcards advertising the online Q&A session were mailed to owners of every property located in the urban single-family zoning districts subject to the new middle housing rules, as well as all the urban community planning organizations (CPOs) and everyone on the project's interested parties list. A total of 42 members of the public attended the online session, many of which had multiple questions about the potential impacts of allowing middle housing in their neighborhoods.
- Staff presentations to several other groups including, a Community Leader's Meeting, the county's Committee of Community Involvement, the Gladstone/Oak Grove Kiwanis Club, and the Jennings Lodge CPO.

This robust public outreach effort ensures any interested parties had more than ample opportunity to participate in this planning process.

This proposal is consistent with Goal 1.

- b. **Goal 2 – Land Use Planning:** Goal 2 requires the County to have and to follow a comprehensive land use plan and implementing regulations. Comprehensive plan provisions and regulations must be consistent with Statewide Planning Goals, but Goal 2 also provides a process by which exceptions can be made to certain Goals.

ZDO-282 does not require an exception to any Statewide Planning Goal. With the ordinance's proposed amendments, the County's adopted and acknowledged Comprehensive Plan will continue to be consistent with Statewide Planning Goals, and the implementing regulations in the ZDO will continue to be consistent with those Goals and with the Comprehensive Plan.

This proposal is consistent with Goal 2.

- c. **Goal 3 – Agricultural Lands:** This goal is **not applicable** because the ZDO-282 text amendments would not change Plan agricultural land policies or implementing regulations for compliance with Goal 3.
- d. **Goal 4 – Forest Lands:** This goal is **not applicable** because the ZDO-282 text amendments would not change the Plan forest lands policies or implementing regulations for compliance with Goal 4.
- e. **Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources:** Goal 5 requires the County to have programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations.

It requires an inventory of natural features, groundwater resources, energy sources, and cultural areas, and encourages the maintenance of inventories of historic resources.

ZDO-282 would not make any change to the County's Comprehensive Plan goals, policies, or inventories, or to ZDO provisions, related to the protection of natural resources, or scenic, historic, or open space resources. Middle housing would be allowed within areas protected under Goal 5, subject to the same regulations and processes as would a detached single-family dwelling.

This proposal is consistent with Goal 5.

- f. **Goal 6 – Air, Water and Land Resources Quality:** Goal 6 instructs the County to consider the protection of air, water, and land resources from pollution and pollutants when developing its Comprehensive Plan. The proposal would not change any Comprehensive Plan goal or policy, or implementing regulation, affecting a Goal 6 resource, nor would it modify the mapping of any protected resource.

This proposal is consistent with Goal 6.

- g. **Goal 7 – Areas Subject to Natural Disasters and Hazards:** Goal 7 requires the County's Comprehensive Plan to address Oregon's natural hazards. ZDO-282 would not change the County's acknowledged Comprehensive Plan policies regarding natural disasters and hazards, nor would it modify the mapping of any hazard.

With the exception of special flood hazard areas, middle housing would be allowed within areas protected under Goal 7, subject to the same regulations and processes as would a detached single-family dwelling. Within special flood hazard areas, only duplexes would be allowed, subject to the same regulations and processes as for a detached, single-family dwelling. ZDO-282 would prohibit all other middle housing in special flood hazard areas, as allowed under the middle housing rules found in OAR 660-046-0010.

This proposal is consistent with Goal 7.

- h. **Goal 8 – Recreational Needs:** Goal 8 is **not applicable** because the text amendments do not propose to change Plan policies or implementing regulations related to recreational needs.
- i. **Goal 9 – Economy of the State:** Goal 9 requires the County to provide an adequate supply of land for commercial and industrial development. ZDO-282 would not change the Comprehensive Plan or zoning designation of any property. It also would not add any new restriction to land uses in areas of the County reserved for commercial and industrial development.

While this goal is not directly applicable, the proposed amendments will support economic development goals by removing code barriers to middle housing, thereby enabling additional housing options for the workforce in unincorporated Clackamas County and would provide more opportunities for people to live where they work. Improving opportunities for workforce housing is one way in which the county can provide a supportive environment for the development and expansion of desired businesses.

As such, this proposal is consistent with Goal 9.

- j. **Goal 10 – Housing:** Goal 10 requires Oregon’s county plans to “*encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.*”

While the Housing Needs Analysis (HNA) completed in 2019 was not formerly adopted and acknowledged, its analysis was completed following the OARs for a Goal 10 analysis and found a significant deficit of residentially-zoned land for housing in urban unincorporated Clackamas County at a variety of income levels and housing types. The proposed amendments in ZDO-282 will help alleviate this shortage and further the objective of Goal 10.

The amendments will allow development of housing types where they were previously prohibited—and potentially at a higher density than currently permitted—which will increase the capacity of lands to accommodate identified housing need. The proposed amendments will also provide more housing choices within existing and new neighborhoods, and may result in housing that is more affordable than existing single-family detached housing development. These changes will provide additional opportunities to meet the housing needs of Clackamas County residents. Specifically, the amendments proposed under ZDO-282 will increase opportunities for housing by:

- Removing the 3,000 SF minimum lot size for residential development and instead letting the applicable development standards (setbacks, lot coverage, parking, etc.) determine what can be built on a lot. This removal will eliminate a barrier that causes more expense and inconvenience for property owners wanting to develop and will allow more lots in the urban area to be developed with housing.
- Increasing allowed lot coverage in the low density residential, which will help streamline the permitting process and may make middle housing development more feasible on some lots.
- Increasing housing variety and affordability home buyers in the urban area by allowing lots developed with middle housing to be divided and sold separately (middle housing lot division).
- Reducing barriers to manufactured home placement in the urban area.
- Offering greater flexibility to housing developers and more opportunities for property owners to provide additional housing on their own properties.

In addition to requiring the various middle housing types be allowed in certain urban neighborhoods, HB2001 also includes a requirement that a jurisdiction consider methods to increase affordability of middle housing including:

- Waiving or deferring system development charges (SDCs)
- Adopting or amending criteria for property tax exemptions or property tax freezes; and
- Assessing a construction tax

Because none of these items are regulated by the ZDO, any consideration of utilizing these methods to try to increase affordability of middle housing development is a separate conversation and would need to include staff from other county departments.

The discussion about SDCs will need to include consideration of:

- The fact that because most urban services in unincorporated county areas are provided by service district, the only SDC that the county has control over is the Transportation System Development Charge (TSDC); and
- Recent changes were made to the TSDC to create a “tiered” system of charges based on primary dwelling size and created a reduced fee for accessory dwelling units.

Staff is coordinating with the appropriate departments to bring each of these items to the Board for discussion and consideration in April of 2022.

This proposal is consistent with Goal 10.

- k. **Goal 11 – Public Facilities and Services:** The purpose of Goal 11 is to ensure that local governments plan and develop a timely, orderly, and efficient arrangement of public facilities and services to act as a framework for urban and rural development. ZDO-282 does not propose any change in adopted plans for the provision of water, sewer, or other public services.

HB2001 provided an opportunity for a jurisdiction to request a time extension for any subareas for that have current deficiencies or would expect to see deficiencies in water, sewer, stormwater or transportation systems that would result from density increases due to the new middle housing requirements. The process to request a time extension was called an IBTER, or Infrastructure Based Time Extension Request).

With the exception of roadways, public services in the urban unincorporated areas of the county are generally provided through service districts (Water Environment Services, Oak Lodge Sanitary & Water Districts, etc.). To understand if there were any areas with service concerns that might warrant such a request, staff contacted the sewer, water, and stormwater providers in the urban unincorporated area in February 2021. The service providers were asked the following two questions:

1. *Are there subareas within your service area where you are lacking capacity to meet current service needs, or service needs through 2023?*
2. *Are there subareas within your service area where the infrastructure would only be expected to exceed capacity with the additional impacts from middle housing development pursuant to HB 2001?*

For the analysis under #2, the IBTER rules specified that:

- Infill and redevelopment areas may only assume a 1% increase in the number of dwelling units produced due to middle housing allowances, and
- Undeveloped and underdeveloped areas may assume a 3% increase in the number of dwelling units produced due to middle housing allowances.

None of the providers that responded indicated service concerns that would meet the IBTER requirements and therefore no request was made for an extension.

In addition, state law requires middle housing be served with “sufficient infrastructure,” which is defined to include a connection to public water and sewer systems and storm drainage facilities all capable of meeting established service levels and access to streets meeting adopted emergency vehicle access standards. All development of middle

housing is required to go through development review, which includes confirmation of the adequacy of such services.³

This proposal is consistent with Goal 11.

- I. **Goal 12 – Transportation:** Goal 12 is implemented by Oregon Administrative Rules (OAR) Chapter 660, Division 12. Local governments are required to adopt a transportation system plan (TSP) and land use regulations to implement the TSP. This proposal does not include amendments to the County’s TSP or transportation-related land use regulations.

OAR 660-012-0060 also requires any comprehensive plan and land use regulation amendment to be evaluated according to the terms outlined in that OAR to demonstrate whether they will have a significant impact on the transportation system. However, OAR 660-046-0030(3) specifically exempts code amendments that are implementing middle housing from compliance with the standards listed in OAR 660-012-0060: *when a local government amends its comprehensive plan or land use regulations to allow Middle Housing, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.*

As such, no additional analysis of the transportation system is needed.

This proposal is consistent with Goal 12.

- m. **Goal 13 – Energy Conservation:** Goal 13 encourages land use plans to consider lot size, building height, density, and other measures in order to help conserve energy. The proposed amendments would not change any policy or implementing regulation regarding energy conservation. Nonetheless, the proposed amendments support this goal by encouraging more efficient use of vacant and infill properties in areas zoned for single-family residential development through the allowance of middle housing types. These housing types typically consume less land per unit and therefore may provide a more energy-efficient alternative to detached, single-family homes.

This proposal is consistent with Goal 13.

- n. **Goal 14 – Urbanization:**
The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The Goal primarily concerns the location of UGBs, the establishment of “urbanizable areas” and unincorporated communities, exception lands, and rural industrial uses.

ZDO-282 would not modify any UGB or the status or boundaries of any unincorporated community. The ordinance would not modify any urban or rural reserve boundary, allow any new land use in such reserve areas in a manner inconsistent with state law, change the land use plan designation or zoning of any property, or allow any new uses in exception lands in a manner inconsistent with state law.

³ OAR 660, Division 46 requires duplexes be granted the same “exceptions to public works standards to detached single-family dwelling development” and allows for (but does not require) other middle housing types (triplexes, quadplexes, townhouses, and cottage clusters) to be granted the same “exceptions.” ZDO-282 would allow the other middle housing types the same “exceptions” for water services, but not for public sewer.

The proposal in ZDO-282 would allow for more efficient use of land within the existing UGB by provide more housing opportunities within the urban, unincorporated areas which may enhance community livability, environmental sustainability, and social interaction in such areas.

This proposal is consistent with Goal 14.

o. **Goal 15 – Willamette River Greenway:**

ZDO-282 would not change any existing requirement related to development in the Willamette River Greenway (WRG). Middle housing would be allowed within the WRG, subject to the same regulations and processes as would a detached single-family dwelling.

This proposal is consistent with Goal 15.

p. **Goals 16-19:**

These four Statewide Planning Goals address estuarine resources, coastal shorelands, beaches and dunes, and ocean resources, respectively, and are **not applicable to Clackamas County**.

2. Oregon Revised Statutes (ORSs) and Oregon Administrative Rules (OARs)

a. ORS 197.758 and OAR 660, Division 46: Middle Housing and HB2001 Implementation

1. ORS 197.758(2), the implementing statute for House Bill 2001 (HB 2001), requires Oregon cities with populations over 25,000 and cities and county areas within the Portland Metro boundary (collectively referred to as “Large Cities”) to allow for the development of: (1) all middle housing types (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) in areas zoned for residential use that allow for the development of detached single-family dwellings; and (2) a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. The proposed Comprehensive Plan and ZDO amendments comply with this requirement because the amendments allow all middle housing types in all urban, “single-family” residential zones (R-5, R-7, R-8.5, R-10, R-15, R-20, R-30, VR-5/7, and VR-4/5), in compliance with the statute.
2. OAR 660-046-0010 specifies that a jurisdiction may regulate middle housing to comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals (Goals) and provides direction on how middle housing may be regulated with area protected under Goals 5, 6, 7, 9, 11, 15, 16, 17 and 18. Specifically, middle housing (except duplexes) may be limited or prohibited in certain areas subject to Goal 5, *Natural Resources*; Goal 7, *Areas Subject to Natural Hazards*; and Goal 9, *Economics*. ZDO-282 proposed to prohibit non-duplex middle housing only in special flood hazard areas, subject to Goal 7 protections, as allowed under this rule. Middle housing developed in other goal-protected areas would remain subject to the same regulations and standards as are applicable to the development of detached, single-mainly dwellings in such areas.
3. OAR 660-046-0220 provides specific standards identifying which siting standards apply to middle housing. ZDO-282 complies with the standard identified in this section, as follows:

- the amendments apply the same siting standards to duplexes, as apply to detached, single-family dwellings in the same zoning districts;
 - the amendments utilize the minimum lots sizes identified in OAR 660-046-0020 for triplexes (5,000 square feet) and for quadplexes and cottage clusters (7,000 square feet); and
 - all other siting standards for triplexes, quadplexes, townhouses, and cottage clusters are either the same as (or less restrictive than) the *Middle Housing Model Code*; the same as those applied to single-family detached dwellings in the same zone; or are the same as those identified for “minimum compliance” in OAR 660-046-0220.
4. OAR 660-046-0225 specifies what design standards local governments may apply to Middle Housing. These include: design standards in the Model Code for Large Cities; design standards that are less restrictive than those in the *Middle Housing Model Code*; the same clear and objective design standards that the Large City applies to detached single-family structures in the same zone; “minimum compliance” standards found in OAR 660-046-0225; or alternative design standards as provided in OAR 660-046-0235. Generally standards originated from the state’s Middle Housing Model Code, but have been, in some cases, reworded for consistency with terms and structure used in the ZDO, lightly edited for clarity, and, where necessary, amended to be more consistent with current standards in the ZDO for detached single-family dwellings. Staff has been careful to not alter siting and design standards from the Model Code in such a way that they would not meet the standards OAR 660-046-0225.

As such, all design standards for middle housing that are proposed in the ZDO text amendments are either the same as (or less restrictive than) the *Middle Housing Model Code* or are the same as those applied to single-family detached dwellings in the same zone. The proposed text amendments do not include any “alternative design standards” as defined in OAR 660-046-0235.

5. OAR 660-046-0030(2) requires that a jurisdiction consider methods to increase affordability of middle housing including:
- Waiving or deferring system development charges (SDCs)
 - Adopting or amending criteria for property tax exemptions or property tax freezes; and
 - Assessing a construction tax

As noted, the Board of County Commissioners will be discussing and considering these items at a meeting with staff from the applicable departments in April of 2022.

- b. **ORS 92.030 and ORS 197.360 to 197.380: Middle Housing Land Divisions**
 Senate Bill 458 (SB 458), which is added to ORS 92.030, requires local governments subject to HB 2001 to allow land divisions for any middle housing type permitted in accordance with procedures identified in ORS 197.360 to 197.380. While SB 458 does not require local governments to amend their development codes or comprehensive plans, the county has chosen to incorporate the middle housing land division requirements of SB 458 as part of the proposed ZDO amendments. The proposed amendments include revisions to definitions, review procedures, and land division regulations, to incorporate middle housing land divisions into the ZDO. The amendments include the specific procedures and timelines found in ORS 197.365 to 197.380, and

include a prohibition on further division of a middle housing lot and on the development of an accessory dwelling unit on a middle housing lot, as allowed by ORS 92.030.

This proposal is consistent with all applicable Oregon Revised Statutes (ORSs) and Oregon Administrative Rules (OARs)

3. Metro Urban Growth Management Functional Plan (UGMFP)

The purpose of the Functional Plan is to implement certain regional goals and objectives adopted by the Metro Council as the Regional Urban Growth Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept and the Regional Framework Plan.

ZDO-282 does not propose to change the County's residential, commercial, or industrial land supply or to regulations related to protection of the county's habitat and water quality areas, or to modify the UGB. This proposal would change allowed housing density standards in urban, unincorporated Clackamas County by allowing increased density in existing single-family zoned areas. The UGMFP addresses circumstances in which a jurisdiction may reduce the housing capacity in certain areas, but does not limit increasing housing capacity or densities. Compliance with relevant sections of the UGMFP are discussed as follows:

- Title 1 of the UGMFP is intended to promote efficient land use within the Metro UGB by increasing the capacity to accommodate housing. Several actions included in ZDO-282 will increase housing capacity in the urban, unincorporated areas of the county, including:
 - Allowing middle housing on lots currently zoned for single-family dwellings;
 - Allowing development on existing lots that are smaller than 3,000 square feet; and
 - Allowing development to cover slightly more of the lot in some circumstances.
- Title 7 is intended to ensure the production of affordable housing within the UGB. Under Title 7, the county is required to ensure that its Comprehensive Plan and implementing ordinances include strategies to: ensure the production of a diverse range of housing types, maintain the existing supply of affordable housing, increase opportunities for new affordable housing dispersed throughout the county, and increase opportunities for households of all income levels to live in affordable housing.

The proposal will increase housing opportunities at a range for prices by:

- Allowing a wider variety of housing options for households with a variety of incomes, ages and living circumstances, sited in a dispersed manner throughout the urban, unincorporated area to help ensure access to services, community amenities, and employment centers;
 - Supporting development of smaller units with lower land and construction costs, all of which can facilitate more affordable housing;
 - Supporting lower-cost home ownership options with the inclusion of middle housing land divisions;
 - Removing barriers to placing manufactured dwellings in the urban area; and
 - Allowing residential development on lots that are smaller than 3,000 square feet.
- Title 8 establishes a process for ensuring compliance with requirements of the UGMFP. An amendment to the county's comprehensive plan or land use regulations is deemed to comply with the UGMFP only if the county provided notice to Metro as required by section

3.07.820(a). Notice of this proposal was provided to Metro on February 18, 2022, 38 days prior to the first evidentiary hearing. Metro has not submitted any comment.

The proposal is consistent with the Functional Plan.

4. Clackamas County's Comprehensive Plan

Staff finds that the following four chapters of the County's Comprehensive Plan are applicable to this proposal.

a. Chapter 2 – Citizen Involvement:

Chapter 2 aims to promote public participation in the County's land use planning. Its policies largely focus on the County's Community Planning Organization (CPO) program and methods for informing and involving the public. Chapter 2 includes these specific policies:

2.A.1 – Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representations, not only of property owners and Countywide special interests, but also of those persons within the neighborhood or areas in question.

2.A.6 – Seek citizens' input not only through recognized community organizations, but also through service organizations, interest groups, granges, and other ways.

2.A.13 – Insure that the County responds to citizen recommendations through appropriate mechanisms and procedures.

The amendments proposed in ZDO-282 were developed with consideration of feedback from a robust public engagement effort that included:

- Discussion groups, held in five languages;
- A virtual Q& A session;
- Presentations to several community groups; and
- Numerous press releases, emails, social media posts and a project webpage.

In addition, consideration of ZDO-282 has proceeded according to the noticing and public hearing requirements of ZDO Section 1307, which implements Chapter 2 of the Plan.

This proposal is consistent with Chapter 2.

b. Chapter 4 – Land Use:

Chapter 4 of the Comprehensive Plan generally includes goals and policies for how land in Clackamas County should be designated and zoned, and goals and policies for what land uses should be allowed in those designations and their implementing zoning districts.

ZDO-282 does not propose to change the Comprehensive Plan land use designation or zoning district of any property. The proposal does, however, change allowed uses and development standards in certain urban zoning district, which necessitated amendments to Chapter 4. Amendments proposed to Chapter 4 would:

- Remove references to outdated population coordination policies and projections. Replace with reference to current state law and responsibilities.

- Amend one of the “residential goals” to be consistent with amendments to Chapter 6, *Housing* and the removal of references about “protecting neighborhood character;” this type of language which has been used in the past to defend exclusionary practices in some neighborhoods.
- Clarify and amend policies to ensure middle housing is allowed in the Low Density Residential designation and specifically to remove references to middle housing types requiring land use approval through a conditional use permit.

No other applicable policies were found in Chapter 4.

This proposal is consistent with Chapter 4.

c. Chapter 6 – Housing

Chapter 6 of the Comprehensive Plan generally includes goals and policies related housing choice, variety and affordability in Clackamas County.

ZDO-282 proposes a substantial rewrite to the introduction, background and issues sections. The existing language in this chapter is outdated and does not reflect current conditions in the county or findings from the most recent Housing Needs Analysis completed for the county. In addition:

- Two of the three Housing Goals were amended to better address current housing needs and to better focus on equity, inclusivity and livability for all residents of Clackamas County; and
- Policies in this chapter were reviewed; edited for clarity and relevance; and grouped together based on which of the Housing Goals each policy was most closely related to. Several new housing policies related to livability, housing choice and the increased opportunities for middle housing in the county were added. Several existing policies were deleted because they were redundant or unnecessary.

Care was taken to ensure amendments to this chapter were consistent both with HB2001 requirements, as well as existing policies and implementation measures in the ZDO.

As such, **this proposal is consistent with Chapter 6.**

d. Chapter 10 – Community Plans and Design Plans:

Chapter 10 of the Comprehensive Plan has specific goals and policies, including design guidelines, for the Mount Hood area, Sunnyside Village, the Clackamas Industrial Area, the North Bank of the Clackamas River, Clackamas Regional Center Area, the Sunnyside Corridor Community, and the McLoughlin Corridor.

ZDO-282 includes proposed to amend the:

- Sunnyside Village Plan
- Clackamas Regional Center Area Design Plan
- Sunnyside Corridor Community Plan

These amendments are necessary to ensure middle housing development is allowed within the boundaries of these plan areas, as required by HB2001. No other applicable policies were found in Chapter 10.

This proposal is consistent with Chapter 10.

e. Chapter 11 – *The Planning Process*:

Chapter 11 of the Comprehensive Plan includes policies requiring inter-governmental and inter-agency coordination, public involvement, and noticing. As explained previously in this report, all required entities have been notified in accordance with law and have been invited to participate in duly-advertised public hearings.

Chapter 11 of the Comprehensive Plan also contains the specific requirement that the Comprehensive Plan and ZDO be consistent with Statewide Planning Goals and with Metro's Urban Growth Management Functional Plan; Chapter 11 is what requires the ZDO itself to be consistent with the Comprehensive Plan. This report's *Analysis & Findings* outline how ZDO-282 is consistent with all of these requirements.

This proposal is consistent with Chapter 11.

5. Zoning and Development Ordinance (ZDO):

The proposed text amendments are legislative. Section 1307 of the ZDO establishes procedural requirements for legislative amendments, which have been or are being followed in the proposal and review of ZDO-282. Notice of this proposal was provided at least 35 days before the first scheduled public hearing to DLCD and all active CPOs, Hamlets, and Villages, as well as other interested agencies and an interested parties list with over 400 names, to allow them an opportunity to review and comment on the proposed amendments. Advertised public hearings are being held before the Planning Commission and the BCC to consider the proposed amendments. The ZDO contains no further specific review criteria that must be applied when considering an amendment to the text of the Comprehensive Plan or ZDO.

RECOMMENDATION

Staff finds the proposed ZDO and Comprehensive Plan text amendments are consistent with all applicable goals and policies. Staff also finds that the proposed amendments are necessary to comply with HB2001 and SB458 and to remove some barriers to housing development, and specifically middle housing, in urban, unincorporated Clackamas County.

Therefore, staff recommends the Planning Commission recommend approval of ZDO-282, as drafted and included in ***Attachments A & B***.

LIST OF ATTACHMENTS

- A. Proposed ZDO amendments (includes summary of amendments to each ZDO Section)
 - 1. **ZDO Section 202**, *Definitions*
 - 2. **ZDO Section 315**, *Urban Low Density Residential (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, and R-30), Village Standard Lot Residential (VR-5/7), Village Small Lot Residential (VR-4/5), Village Townhouse (VTH), Planned Medium Density Residential (PMD), Medium Density Residential (MR-1), Medium High Density Residential (MR-2), High Density Residential (HDR), Village Apartment (VA), Special High Density Residential (SHD), and Regional Center High Density Residential (RCHDR) Districts*
 - 3. **ZDO Section 316**, *Rural Area Residential 1-Acre (RA-1), Rural Area Residential 2-Acre (RA-2), Recreational Residential (RR), Rural Residential Farm Forest 5-Acre (RRFF-5), Farm Forest 10-Acre (FF-10), and Future Urban 10-Acre (FU-10) Districts*
 - 4. **ZDO Section 317**, *Mountain Recreational Resort (MRR) and Hoodland Residential (HR) Districts;*
 - 5. **ZDO Section 510**, *Neighborhood Commercial (NC), Community Commercial (C-2), Regional Center Commercial (RCC), Retail Commercial (RTL), Corridor Commercial (CC), General Commercial (C-3), Planned Mixed Use (PMU), Station Community Mixed Use (SCMU), Office Apartment (OA), Office Commercial (OC), and Regional Center Office (RCO) Districts*
 - 6. **ZDO Section 824**, *Manufactured Dwellings*
 - 7. **ZDO Section 839**, *Accessory Dwelling Units*
 - 8. **ZDO Section 845**, *Triplexes, Quadplexes, Townhouses, and Cottage Clusters*
 - 9. **ZDO Section 1001**, *General Provisions*
 - 10. **ZDO Section 1002**, *Protection of Natural Features*
 - 11. **ZDO Section 1005**, *Site and Building Design*
 - 12. **ZDO Section 1006**, *Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control*
 - 13. **ZDO Section 1007**, *Roads and Connectivity*
 - 14. **ZDO Section 1009**, *Landscaping*
 - 15. **ZDO Section 1010**, *Signs*
 - 16. **ZDO Section 1012**, *Lot Size and Density*
 - 17. **ZDO Section 1015**, *Parking and Loading*
 - 18. **ZDO Section 1021**, *Solid Waste and Recyclable Material Collection*
 - 19. **ZDO Section 1102**, *Design Review*
 - 20. **ZDO Section 1105**, *Subdivisions, Partitions, Replats, Middle Housing Land Divisions, Condominium Plats, and Vacations of Recorded Plats*
 - 21. **ZDO Section 1307**, *Procedures*
- B. Proposed Comprehensive Plan amendments (includes summary of amendments to each Chapter)
 - 1. **Chapter 4**, *Land Use*
 - 2. **Chapter 6**, *Housing*
 - 3. **Chapter 10**, *Community Plans and Design Plans*
 - 4. **Appendix B**, *Summary of Supporting Documents*
- C. Public Outreach Summaries
 - 1. **Findings from Session 2 Focus Groups**, Clackamas County HB2001 Multicultural Community Engagement – Phase 2, March 2022
 - 2. **Findings from Online Survey & Session 1 Focus Groups**, Clackamas County HB2001 Multicultural Community Engagement – Phase 2, January 2022
 - 3. **HB2001 Implementation Project, Foundational Elements of Engagement**, Final Report, February – June 2021
- D. Exhibits 1-8