

Ethan Stuckmayer
Oregon Department of Land Conservation and Development
635 Capitol St NE # 150
Salem, OR 97301



July 8, 2020

RE: HB 2001 Rulemaking and Middle Housing Minimum Compliance Standards

The League of Oregon Cities (LOC) writes to urge DLCD to revisit their current approach to the minimum compliance standards for triplexes and quadplexes, townhomes, and cluster cottages. In passing HB 2001, the Legislature made a clear distinction between requiring duplexes on every lot or parcel zoned for single family residential use and *not* requiring triplexes, quadplexes, townhomes and cluster cottages on every lot, but instead “in areas zoned for residential use.” The Department’s proposed minimum compliance standards overstep that legislative intent and the proposed “whittle away” approach effectively requires these middle housing types on all lots. When combined with the Department’s proposed restrictions on minimum lot sizes, cities are left with very little flexibility when designing their own codes to comply with HB 2001.

The current “whittle away” approach:

- Does not expressly allow cities to define different areas within their jurisdiction in which middle housing can be regulated in different ways, except for excluding specific geographic areas through the “whittle away” approach.
- Fails to provide a path for cities to retain middle housing strategies that are already working and have already produced middle housing.¹ Instead, the minimum compliance standards specify one approach statewide.
- Prevents cities from responding to context and community goals while creating development rules that allow middle housing in areas zoned for residential use. This is because the current minimum compliance standards:
 - Remove or severely limit cities’ ability to use tools such as minimum lot size, maximum density, planned unit developments, and unit maximums per lot. The proposed minimum compliance standards prohibit cities from requiring larger minimum lot sizes for triplexes or quadplexes than for detached single family dwellings. This restriction prevents cities from planning for smaller minimum lot sizes for single family units and duplexes.
 - Do not allow a jurisdiction to adjust minimum parking requirements to deal with conditions, such as housing units with greater parking demand or situations where on-street parking is not available.

Commented [AN1]: Mark please feel free to edit accordingly!

¹ Cities and counties in Oregon have used housing mix requirements, master plan requirements, Planned Unit Developments, minimum density requirements, reduced lot size requirements, zoning incentives and other techniques to promote middle housing in ways that produces a significant number of middle housing units.

- Rely on a flawed or incomplete feasibility analysis that only analyzes vacant lots (when most middle housing in existing neighborhoods will involve redevelopment or adding units to sites with existing housing) and assume very low maximum floor-area-ratios that are no longer being proposed by DLCDC staff.

Given the need for additional flexibility, the LOC suggests a different approach to defining “areas” and drafting minimum compliance administrative rules for jurisdictions that will be approving their own development rules. The approach sets expectations for jurisdictions’ performance while allowing cities a variety of ways to meet those performance measures. The basic components of the approach are:

1. **Desegregation:** Every jurisdiction would be expected to allow middle housing in a way that reduces segregation by race, ethnicity and income by providing the opportunity for a wider range of housing types to be built in areas zoned for residential use. The state’s administrative rules would set expectations. Jurisdictions would make findings, and the state would review to ensure compliance.
2. **Racial equity:** Every jurisdiction would be expected to allow middle housing in a way that promotes racial equity by providing the opportunity for a wider range of housing types to be built in areas zoned for residential use. The state’s administrative rules would set expectations. Jurisdictions would make findings, and the state would review to ensure compliance.
3. **Area definitions:** Each jurisdiction would be able to define geographic areas² within the jurisdiction within which the jurisdiction could vary its approach to allowing middle housing. The areas combined would have to include every lot “zoned for residential use” unless areas are removed using the “whittling away” approach.
4. **Standards and expectations:** Local jurisdictions’ standards shall allow middle housing types within each area designated within a jurisdiction. Local jurisdictions may allow middle housing types on all lots but are not required to allow them on all lots. Each jurisdiction then would approve development standards for those areas that allow middle housing. The state should establish minimum expectations for middle housing opportunities, such as through guidelines (allow middle housing on a “significant” or “substantial” number of lots, for example) or numerical standards (ensure middle housing is allowed on 30 percent of lots or greater within each area, for example).
5. **Opportunity not exclusivity:** In addition to the segregation and racial equity expectations mentioned above, the administrative rules also could specify that middle housing must be allowed in high-wealth/low-poverty sub-areas or neighborhoods and require jurisdictions to provide analysis that demonstrates middle housing is allowed within those sub-areas.

The five points above outline a conceptual approach, which is described in more detail in options B and C in the attached letter from Brian Martin. Additional work would be required to develop administrative rules.

The LOC and individual city representatives are eager to work with DLCDC staff and the Land Conservation and Development Commission to craft an approach that faithfully implements HB 2001,

² Boundaries can be zones, land use districts, Comprehensive Plan designations, development pattern areas or any other geographical solution jurisdictions develop to respond to local context.

significantly increases middle housing opportunities and allows cities the flexibility to consider community history, public engagement and local context.

