

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 06/30/2020 **Approx. Start Time:** 1:30 p.m. **Approx. Length:** 45 mins.

Presentation Title: Update on Rulemaking for House Bill (HB) 2001 (2019), related to “Middle Housing” and HB2003 (2019), related to “Needed Housing”

Department: Planning and Zoning Division, Department of Transportation and Development (DTD) and Water Environment Services (WES)

Presenters: Martha Fritzie, Principal Planner (DTD); Chris Storey, Assistant Director (WES)

Other Invitees: Jennifer Hughes, Planning Director; Karen Buehrig, Long Range Planning Manager; Nate Boderman, County Counsel; Joy Fields, Sr. Planner; Ellen Rogalin, Community Relations Specialist; Cheryl Bell, DTD Assistant Director; Dan Johnson, DTD Director; Chris Lyons, Government Affairs Manager; Trent Wilson; Government Affairs Specialist; Jamie Stasny, Principal Planner

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

This Policy Session is informational; to the extent the Board has specific direction on policy issues, staff will represent those views as part of their participation in the Rules Advisory Committee (RAC).

EXECUTIVE SUMMARY:

The purpose of this planning session is twofold:

1. To inform the Board about State Rulemaking underway for HB2001 & HB2003 (2019), which will require the county to amend the Zoning & Development Ordinance (ZDO) to allow for “middle housing”, including duplexes, triplexes, quadplexes, townhomes and cottage clusters, in urban single-family zoning districts; and
2. To discuss any concerns the Board may have with the direction the Rulemaking is headed and whether staff should bring up those concerns during the RAC discussions or hearings.

Background

House Bill 2001 (HB2001) and HB 2003 (HB2003)

HB2001: Applies to cities with populations over 10,000 people throughout the state, as well as cities and counties with a population over 1,000 in the Portland Metro urban growth boundary. In accordance with HB2001, Clackamas County has until June 2022 to modify its zoning code to provide for “middle housing” by allowing a duplex on any urban lot zoned for a detached single-family home, and by allowing triplexes, quadplexes, cottage clusters and townhouses in urban “areas” zoned for a detached single-family home.

HB2001 also allows local governments to request a time extension for the application of middle housing provisions in areas with infrastructure constraints (water, sewer, storm water, or transportation) that would not allow further middle housing development.

HB2003: – Includes a new requirement for cities to adopt Housing Production Strategies (HPS). While Clackamas County does not have an obligation to complete a HPS; most of the county’s incorporated cities will need to complete one.

Rulemaking Advisory Committee (RAC) and Technical Advisory Committees (TAC)

In response to HB2001 and HB2003, the Land Conservation and Development Commission (LCDC) initiated rulemaking to begin implementation of the 'middle housing' and HPS requirements. To advise on this rulemaking, the commission directed DLCD to establish a Rulemaking Advisory Committee (RAC). Clackamas County has two staff participating in the RAC: Chris Storey (Asst. Director WES) is a participating member on behalf of both the County and the Special Districts Association of Oregon, and Martha Fritzie (Principal Planner, DTD Planning) is an alternate. Milwaukie City Councilor Angel Falconer is also an alternate RAC member.

Advising the RAC are three subcommittees, each serving as a Technical Advisory Committee (TAC) for a portion of the overall rulemaking:

1. HB2001 Model Code (MC) TAC: Martha Fritzie is a participating member
2. Infrastructure-Based Time Extension Requests (IBTER) TAC: Chris Storey is a participating member, as is West Linn Assistant City Manager John Williams.
3. HB2003 Housing Production Strategies TAC: The County has no participating member.

To date, there have been seven (7) RAC meetings; six (6) IBTER TAC meetings; and six (6) MC TAC meeting.

Why this Rulemaking is relevant to Clackamas County

- All detached single-family residential zones in urban unincorporated Clackamas County are subject to the regulations that are being developed for what the State has termed “Large and Metro Cities”. These rules will direct how the county will modify its zoning code to allow a duplex on any urban lot zoned for a detached single-family home, and allow triplexes, quadplexes, cottage clusters and townhouses in urban “areas” zoned for a detached single-family home.
- The Model Code (MC) TAC has been tasked with providing direction on two separate components:
 - A Model Code, which is actual code language that could be directly applied to a jurisdiction, should it choose to do so, or if a jurisdiction chooses to take no action, the Model Code will automatically be applied on the deadline provided in HB2001 (June 30, 2021 for “Medium Cities” and June 30, 2022 for “Large and Metro Cities”).
 - Oregon Administrative Rules (OARs) that provide the “minimum compliance” regulations for those jurisdictions that choose not to adopt the Model Code, but may use the Model Code as guidance in the creation of their own regulations to comply with HB2001. County Planning staff is expecting to establish regulations in this manner and, as such, is more concerned with the identified “minimum compliance” regulations than the Model Code itself. Developing these regulations will be included in Phase 2 of the “Housing Strategies” project, which is anticipated to be underway in the late fall/ early winter of 2020.
- The “Medium Cities” model code and associated OARs have been drafted and are scheduled for adoption by the Land Conservation and Development Commission (LCDC) at a public hearing during their July 23rd-24th session. These rules would provide the regulations for allowing a duplex on any urban lot zoned for a single-family home in the “Medium Cities”; however, we expect that these same rules will be incorporated into the “Large and Metro Cities” model code and associated OARs.

- The process for receiving a delay in the adoption of the zoning changes will be laid out in the Infrastructure Based Time Extension Rule, or “IBTER.”
 - The IBTER process is a voluntary decision by a local jurisdiction with planning authority to request a delay in up zoning single family residential in a particular area as required to allow the middle housing element set forth in the statute. The county, as the land use planning authority, could elect to pursue an IBTER by filing an application by June 30, 2021. Such a request would need to be done in close coordination with an area’s utility service provider.
 - The IBTER application will be based on a set of rules that are still in the process of being developed. A key theme running through them is that the infrastructure impact that would justify a time extension cannot be a pre-existing condition that is acceptable for single family housing. It must manifest due to the increased demand on that infrastructure due to the increased density of housing by December 31, 2023.
 - There are proposed baselines for the rate of growth than can be assumed regarding the infrastructure impact, and the application must include a proposed plan on how to remedy that deficiency. The application is discretionary, and can be rejected by the LCDC.

Expected Adoption Schedule (LCDC)

- **July 23-24, 2020:** Final adoption of “Medium Cities” Model Code and OARs, and first reading of the IBTER rules.
- **August 5, 2020:** Special meeting of LCDC for second reading and adoption of the IBTER rules.
- **September 24-25, 2020:** First reading for “Large and Metro Cities” Model Code and OARs; first reading of Housing Production Strategy rules.
- **November 12-13, 2020:** Second reading and adoption of “Large and Metro Cities” Model Code and OARs; second reading and adoption of Housing Production Strategy rules.

Several more RAC and TAC meetings have been scheduled through the summer months to review drafts prior to the LCDC adoption hearings.

Discussion Topics/ Issues

Staff has identified the following four issues as the most significant and/or likely to be of concern at this point in the rulemaking:

1. **Flexibility.** Throughout the rulemaking there has been a struggle with allowing local jurisdictions flexibility while still meeting the intent of the legislation, which is, generally, to provide for more housing in traditionally single-family only neighborhoods. While Staff can understand and appreciate this struggle, so far DLCD seems to be erring on the side of less, rather than more, flexibility out of concern that there may be jurisdictions that would take advantage of the flexibility to find a way to not provide for more equitable housing opportunities in some of the more “exclusive” single-family neighborhoods.

County staff, and staff of other jurisdictions involved in the rulemaking, have been consistently asking for the minimum compliance provisions to allow cities and counties more

flexibility so long as their approaches comply with HB 2001. The need for flexibility has been requested so jurisdictions can consider local context when developing zoning provisions, and so they can work with their community members to consider alternatives in order to find the best approach to provide more housing choice for current and future community members.

2. **Parking.** Throughout all the meetings, some of the liveliest discussions have been around parking and transportation; in fact, all three work groups have struggled with how to deal with transportation and parking in their various focus areas.
 - Model Code: The amount of off-street parking that should be required has been a controversial issue in the Model Code work. Despite a fair amount of push-back from both RAC and TAC members, DLCDC has proposed the following parking requirements:

“Middle Housing” Type	Model Code (as currently drafted)	Minimum Compliance (as currently drafted in OARs or as discussed in RAC)
Duplexes	No off-street parking spaces required	A jurisdiction may not <u>require</u> more than 2 off-street space per duplex (or 1 per unit). *This does not mean that a jurisdiction could not allow a developer to build a duplex with more than 2 spaces, just that it cannot require the developer to do so.
Triplexes/ Quadplexes	Considering options ranging from 0 to 1 off-street parking spaces required for a triplex and 0 to 2 spaces for a quadplex (not per unit)	A jurisdiction may not <u>require</u> more than 1 off-street space per unit in a triplex or quadplex. *Again, this does not mean that a jurisdiction could not allow a developer to build a plex with more off-street spaces, just that it cannot require the developer to do so.
Townhomes and cottage clusters	TBD	TBD

For context, the county’s ZDO currently includes the following off-street parking requirements for dwellings:

Dwelling type	# Off-Street Spaces Required (County ZDO)
Detached SF/ Attached SF (townhome)	1
Duplex	3
Triplex	5
Quadplex	Ranges from 1.25 – 1.75 per dwelling unit, depending on number of bedrooms
Cottage clusters	Currently not a housing option in the county; will need to be included with the forthcoming ZDO amendments.

In general, there is concern among the local jurisdictions that the Model Code parking requirements do not currently reflect or support the context and needs of communities throughout the state, particularly in those communities that have limited transit and longer commutes or that have a large number of college students in roommate situations.

On a staff level, the “minimum compliance” requirement of not more than 2 spaces for a duplex does not cause a tremendous amount of concern for our code and development standards. However, staff does understand that other jurisdictions have different needs and this may not be sufficient for them.

With regard to the more dense “middle housing” types, however, staff does have more concerns. Having an off-street parking ratio of 1 space per unit may be problematic in areas with limited on-street parking to accommodate households with multiple cars and/or visitors. As we think about appropriate minimum parking requirements it is important to balance these needs with the fact that providing more parking can drive up housing costs.

- IBTER: There has been general agreement that water and wastewater are unlikely to be reasons for delaying up zoning given that the systems are designed for peak service demand and surface water impacts are reviewed on a site- and development-specific basis. However, a lack of off-street parking requirements for new dwelling units and the increased impact of vehicular traffic could overwhelm local transportation systems and justify an extension. There was robust discussion regarding the assumptions on the amount of the parking required, and how to evaluate the difference between the impacts of land use requirements and development requirements that manifest as part of the development review process, etc. This standard was ultimately recognized as the one requiring the most local flexibility and least state mandates.
3. **“In areas.”** With respect to the “Large and Metro Cities” rulemaking, this is, by far, the most controversial and difficult topic to address. Because HB2001 specifically (and presumably intentionally) states that duplexes must be allowed on every lot zoned for a single-family dwelling but that the other middle housing types (triplexes, quadplexes, etc) must be allowed “in areas” zoned for a single-family dwelling, the issue becomes how a jurisdiction would and should define the “areas” where these types of housing will be allowed.

The RAC and TACs have just recently begun the conversation about “areas” and DLCD has proposed the following two methods as options for consideration:

- The “whittle down” method starts with an assumption that all the middle housing types are allowed in all residential areas zoned for single-family dwellings and then eliminates areas from eligibility if they are not “well-suited” for middle housing development. As currently drafted, the only justifications for “whittling down” the areas are based on specific wildlife habitat and other already-protected areas or areas with infrastructure deficiencies that cannot be remedied. DLCD staff has noted that under this approach, there will be additional opportunities (this language has not been drafted yet) to designate other areas to be “whittled away”, as long as there is “robust justification” for restricting middle housing types in those areas. At this point, we are uncertain what sort of “robust justification” would be required and, absent a realistic opportunity to further “whittle areas” to those that are most appropriate to allow middle housing, this method may not meet the intent of HB2001, which clearly implies that not all single-family lots are appropriate for all the middle housing types.
- The “balloon” method would determine areas that are well-suited for middle housing development, considering locational factors such as proximity to centers and services, other more dense housing development, transit lines/stations or certain classifications of roads. This method would likely result in a more limited set of “areas” in which the other middle housing types must be allowed, which raises some equity concerns, as it is clear

that the intent of HB2001 is to provide more housing choice in historically exclusive residential areas.

It is pretty clear from the documents produced by DLCD and conversations at the most recent RAC meeting, that DLCD's preference is the "whittle down" method. This was primarily motivated by a conversation that looked at the approaches through an equity lens, and the observation from a RAC member that prior city-specific efforts using the balloon method were not successful in increasing middle housing. Through the various committees, Staff will continue to advocate for more flexibility with whatever method ends up being used to define "areas," but the ability of the county to define these areas in our own code amendments will be limited by what is ultimately adopted by LCDC.

4. ***IBTER and the adoption timeline.***

The IBTER process will conclude in the next 60 days and is intended to capture unique impacts from up-zoning and not more general infrastructure issues. The remaining opportunity for changes to the draft rules is limited, as the adoption timeline is nearing completion, and the statute does not grant much space for the proposed rules to be other than what is being proposed.

The question of whether to file an IBTER application is likely to be difficult because the County is charged with making the decision to file for the urban unincorporated area, but is not the infrastructure provider for a significant portion of it; Oak Lodge Water Services is responsible for water, wastewater and surface water in that jurisdiction, and there are several other water providers. Once the rules are codified, it will be useful for the utility service providers in that area to provide a written report to the County if they foresee an infrastructure challenge during the relevant time horizon.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the funding source? General Fund

The development of regulations to address HB2001 will be included in Phase 2 of the Housing Strategies Project (Planning File Number ZDO-277), which is part of the Planning & Zoning Division's current budget, funded by the General Fund.

STRATEGIC PLAN ALIGNMENT:

- **How does this item align with your Department's Strategic Business Plan goals?**
The project aligns with the Long-Range Planning program's purpose of providing land use and transportation plan development, analysis, coordination and public engagement services to residents; businesses; local, regional and state partners; and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.

- **How does this item align with the County's Performance Clackamas goals?**

The project aligns with the goal to "ensure safe, healthy, and secure communities" by providing more opportunities for the development of middle housing that will be

appropriate, safe and more affordable and it will help the county achieve the housing targets in the Board's Performance Clackamas strategic plan, which identifies a 5-year goal for DTD to provide zoning/places for 700 new dwelling units affordable to households between 60% and 110% of the area's median income (AMI).

LEGAL/POLICY REQUIREMENTS:

HB 2001 requires compliance from local jurisdictions, which will involve adoption of Comprehensive Plan and Zoning & Development Ordinance changes, and coordination with cities and special districts regarding the provision of services in those areas.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The county has been awarded grant funding from DLCD to assist in the development and implementation of an equitable public outreach program to assist with the county's code amendments that will take place once the Rulemaking is completed.

In addition, public notice will be provided, as required by law, for any proposed amendments to the Comprehensive Plan and/or ZDO that come before the Board for consideration at a public hearing.

OPTIONS:

Informational only. To the extent the Board has specific requests on policy issues, staff will represent those views as part of their participation in the RAC or may provide testimony for the adoption hearings.

RECOMMENDATION:

N/A

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Martha Fritzie @ mfritzie@clackamas.us or 503-742-4529
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