

CITY OF DUNDEE
PLANNING COMMISSION AGENDA
P.O. Box 220
801 N. Highway 99W
Dundee, Oregon 97115

MEETING WILL BE IN PERSON AND TELECONFERENCED

Join Zoom Meeting: <https://us02web.zoom.us/j/87332167112>

Or listen by calling: 1-253-215-8782

Meeting ID: 873 3216 7112

MEETING DATE: February 19, 2025

Meeting Time: 7:00pm

- I.** Call Meeting to Order
- II.** Introduction of New Planning Commission Member(s)
- III.** Public Comment
- IV.** Work Session – Code Changes to Duplexes and ADUs
- V.** Issues from Planning Commissioners
- VI.** Adjournment



MEMORANDUM

TO: Dundee Planning Commission

FROM: Doug Rux, City Planner
Steve Dahl, City Administrator

DATE: February 19, 2025

SUBJECT: Dundee Development Code Changes for Duplexes and Accessory Dwelling Units (ADUs)

The Oregon Legislature in 2023 adopted HB 3395 (Attachment 1). The adopted Bill in Section 23 amended ORS 197.758 related to Siting Duplexes. The new language requires that communities with a population of 2,500 or larger shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of a detached single-family dwelling. Prior to the adoption of HB 3395 the population threshold was 10,000. Duplexes are considered a Middle Housing type of development. Compliance with Section 20 of the Bill is required by June 30, 2025. I have highlighted in yellow relevant sections of the OAR.

HB 2001 was adopted in 2019 (Attachment 2). The Department of Land Conservation and Development (DLCD) and the Land Conservation Development Commission (LCDC) adopted Oregon Administrative Rules (OAR) in 2020 to implement Middle Housing types, including Duplexes (Attachment 3). Attachment 3 is a copy of OAR Division 46. I have highlighted in yellow relevant sections of the OAR.

The Oregon Legislature adopted HB 458 in 2021 (Attachment 4). This Bill was a follow-up to HB 2001 noted above. The Bill allows for Middle Housing lot division. The Bill sets forth a series of parameters on how a city must process middle housing lot division applications. The city must apply an "expedited land division" process defined in ORS 197.360 through 197.380. Attachment 5 is a guidance document produced by DLCD. At the time the Bill was adopted it did not apply to the City of Dundee because the population threshold was 10,000 and above. With HB 3395 that threshold was lowered to 2,500 for duplexes.

SB 1051 was adopted by the Oregon Legislature in 2017 requiring that any city with a population of 2,500 or more allow in areas zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design (Attachment 6). DLCD prepared a guidance document on implementing the regulations in March 2018 and updated the document in September 2019 to reflect changes from HB 2001 (2019). A copy of the guidance document is included as Attachment 7.

So, what does all of this mean for the City of Dundee? Title 17 Development Code of the Dundee Municipal Code is not in compliance with State Law.

Staff have prepared a document outlining the sections of the Development Code that need to be updated to comply with ORS, OAR and Guidance Documents. The document is highlighted in yellow where changes would be required with comments on what applicable ORS, OAR, or Guidance Document applies. Additionally, there are questions that require Planning Commission feedback to prepare an amendment.

The sections of the Dundee Comprehensive Plan and Dundee Development Code that need to be updated include:

Comprehensive Plan

LAND USE AND URBANIZATION/ POLICIES/RESIDENTIAL LAND USE
HOUSING/ POLICIES

Development Code

Chapter 17.202, ZONING REGULATIONS,

17.202.010 Purpose.

17.202.020 Allowed uses, Table 17.202.020:

17.202.030 Lot and development standards by zoning district, Table 17.202.030

17.202.040 Yard standards, exceptions to yard and building height standards.

Chapter 17.203, SPECIAL USE STANDARDS

17.203.080 Two-family (duplex) dwellings.

17.203.140 Outdoor/unenclosed uses.

17.203.260 Accessory dwelling unit (ADU).

Chapter 17.304, PARKING AND LOADING

17.304.040 Automobile parking standards.

17.304.050 Bicycle parking standards.

Chapter 17.305, PUBLIC IMPROVEMENTS AND UTILITIES

17.305.030 Street standards.

Chapter 17.306, SIGNS

17.306.030 Development standards.

Chapter 17.402, SITE DEVELOPMENT REVIEW

17.402.020 Applicability and exemptions.

Chapter 17.403, LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS

Chapter 17.501, DEFINITIONS

17.501.020 Definitions.

Municipal Code – Health and Safety

Chapter 8.28, NOISE

8.28.020 Unreasonable noise prohibited.

8.28.040 Unlawful noise levels.

At the Work Session staff will recap the required ORS, OAR and Guidance Documents. We will then work through and discuss the Dundee Comprehensive Plan, Development Code sections, and Municipal Code Health and Safety chapter that will need to be modified.

- Attachments:
1. HB 3395 (2023)
 2. HB 2001 (2019)
 3. OAR Division 46
 4. HB 458 (2021)
 5. DLCDC Guidance HB 458
 6. SB 1051 (2017)
 7. DLCDC Guidance on Implementing ADU Requirements
 8. Comprehensive Plan/Development Code/Municipal Code Sections

82nd OREGON LEGISLATIVE ASSEMBLY--2023 Regular Session

Enrolled
House Bill 3395

Sponsored by Representatives RAYFIELD, DEXTER, GOMBERG, Senator JAMA; Representatives ANDERSEN, NELSON, Senators ANDERSON, PATTERSON

CHAPTER

AN ACT

Relating to housing; creating new provisions; amending ORS 92.090, 94.550, 100.015, 100.022, 100.105, 100.110, 100.115, 197.303, 197.758, 197.830, 215.427, 227.178 and 458.650 and sections 3 and 4, chapter 639, Oregon Laws 2019, section 3, chapter 18, Oregon Laws 2021, sections 4 and 6, chapter 67, Oregon Laws 2021, and section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001); repealing section 4, chapter 18, Oregon Laws 2021; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

RESIDENTIAL USE OF COMMERCIAL LANDS

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 197.286 to 197.314.

SECTION 2. (1) Notwithstanding an acknowledged comprehensive plan or land use regulations, within an urban growth boundary a local government shall allow, on lands zoned to allow only commercial uses and not industrial uses, the siting and development of:

(a) Residential structures subject to an affordable housing covenant as provided in ORS 456.270 to 456.295 making each unit affordable to a household with income less than or equal to 60 percent of the area median income as defined in ORS 456.270; or

(b) Mixed use structures with ground floor commercial units and residential units subject to an affordable housing covenant as provided in ORS 456.270 to 456.295 making the properties affordable to moderate income households, as defined in ORS 456.270.

(2) The local government may only apply those approval standards, conditions and procedures under ORS 197.307, that would be applicable to the residential zone of the local government that is most comparable in density to the allowed commercial uses.

(3) Development under this section does not:

(a) Trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

(b) Apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

(B) The property contains a slope of 25 percent or greater;

(C) The property is within a 100-year floodplain; or

(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces.

(c) Apply on lands that are vacant or that were added to the urban growth boundary within the last 15 years.

RESIDENTIAL APPROVAL PROCEDURES

SECTION 3. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section and ORS 197.311 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section or the 100-day period set in ORS 197.311 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section and the 100-day period set in ORS 197.311 do not apply to:

(a) A decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610[.]; or

(b) A decision of a county involving an application for the development of residential structures within an urban growth boundary, where the county has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197.311 or 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(10) The periods set forth in subsections (1) and (5) of this section and ORS 197.311 may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

SECTION 4. ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section or ORS 197.311 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section or the 100-day period set in ORS 197.311 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section and the 100-day period set in ORS 197.311 do not apply to:

(a) A decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610[.]; or

(b) A decision of a city involving an application for the development of residential structures within an urban growth boundary, where the city has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197.311 or 227.179 as a

condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The periods set forth in subsections (1) and (5) of this section and ORS 197.311 may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

SECTION 5. ORS 197.830 is amended to read:

197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620, a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(6) The appeal periods described in subsections (3), (4) and (5) of this section:

(a) May not exceed three years after the date of the decision, except as provided in paragraph (b) of this subsection.

(b) May not exceed 10 years after the date of the decision if notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.797 is required but has not been provided.

(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a statement identifying when, how and to whom notice was provided under ORS 197.615 does not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$300. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the board shall award the filing fee to the local government, special district or state agency.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion. If the board denies a petitioner's objection to the record, the board may establish a new deadline for the petition for review to be filed that may not be less than 14 days from the later of the original deadline for the brief or the date of denial of the petitioner's record objection.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) **The local government or state agency may withdraw its decision for purposes of reconsideration** at any time:

(A) Subsequent to the filing of a notice of intent; and

(B) Prior to:

(i) The date set for filing the record[,]; or[,]

(ii) On appeal of a decision under ORS 197.610 to 197.625 **or relating to the development of a residential structure**, [prior to] the filing of the respondent's brief[, the local government or state agency may withdraw its decision for purposes of reconsideration].

(c) If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent is not required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15) Upon entry of its final order, the board:

(a) May, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review.

(b) Shall award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position or filed any motion without probable cause to believe the position or motion was well-founded in law or on factually supported information.

(c) Shall award costs and attorney fees to a party as provided in ORS 197.843.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17)(a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

(19) The board shall track and report on its website:

(a) The number of reviews commenced, as described in subsection (1) of this section, the number of reviews commenced for which a petition is filed under subsection (2) of this section and, in relation to each of those numbers, the rate at which the reviews result in a decision of the board to uphold, reverse or remand the land use decision or limited land use decision. The board shall track and report reviews under this paragraph in categories established by the board.

(b) A list of petitioners, the number of reviews commenced and the rate at which the petitioner's reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision.

(c) A list of respondents, the number of reviews involving each respondent and the rate at which reviews involving the respondent have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision. Additionally, when a respondent is the local government that made the land use decision or limited land use decision, the board shall track whether the local government appears before the board.

(d) A list of reviews, and a brief summary of the circumstances in each review, under which the board exercises its discretion to require a losing party to pay the attorney fees of the prevailing party.

EMERGENCY SHELTER SITING

SECTION 6. Section 4, chapter 18, Oregon Laws 2021, as amended by section 3, chapter 47, Oregon Laws 2022, is repealed.

SECTION 7. Section 3, chapter 18, Oregon Laws 2021, is amended to read:

Sec. 3. (1) A local government shall approve an application for the development or use of land for an emergency shelter, as defined in [section 2 of this 2021 Act] **ORS 197.782**, on any property, notwithstanding **this chapter or** ORS chapter 195, [197,] 197A, 215 or 227 or any statewide [plan] **land use planning goal**, rule of the Land Conservation and Development Commission or local land use regulation, zoning ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency shelter:

(a) Includes sleeping and restroom facilities for clients;

(b) Will comply with applicable building codes;

(c) Is located inside an urban growth boundary or in an area zoned for rural residential use as defined in ORS 215.501;

(d) Will not result in the development of a new building that is sited within an area designated under a statewide planning goal relating to natural disasters and hazards, including flood plains or mapped environmental health hazards, unless the development complies with regulations directly related to the hazard;

(e) Has adequate transportation access to commercial and medical services; and

(f) Will not pose any unreasonable risk to public health or safety.

(2) An emergency shelter allowed under this section must be operated by:

(a) A local government as defined in ORS 174.116;

(b) An organization with at least two years' experience operating an emergency shelter using best practices that is:

(A) A local housing authority as defined in ORS 456.375;

(B) A religious corporation as defined in ORS 65.001; or

(C) A public benefit corporation, as defined in ORS 65.001, whose charitable purpose includes the support of homeless individuals, that has been recognized as exempt from income tax under section 501(a) of the Internal Revenue Code [on or before January 1, 2018] **for at least three years before the date of the application for a shelter**; or

(c) A nonprofit corporation partnering with any other entity described in this subsection.

(3) An emergency shelter approved under this section:

(a) May provide on-site for its clients and at no cost to the clients:

(A) Showering or bathing;

(B) Storage for personal property;

(C) Laundry facilities;

(D) Service of food prepared on-site or off-site;

(E) Recreation areas for children and pets;

(F) Case management services for housing, financial, vocational, educational or physical or behavioral health care services; or

(G) Any other services incidental to shelter.

(b) May include youth shelters, winter or warming shelters, day shelters and family violence shelter homes as defined in ORS 409.290.

(4) An emergency shelter approved under this section may also provide additional services not described in subsection (3) of this section to individuals who are transitioning from unsheltered homeless status. An organization providing services under this subsection may charge a fee of no more than \$300 per month per client and only to clients who are financially able to pay the fee and who request the services.

(5)(a) The approval **or denial** of an emergency shelter under this section **may be made without a hearing. Whether or not a hearing is held, the approval or denial** is not a land use decision and is subject to review only under ORS 34.010 to 34.100.

(b) **A reviewing court shall award attorney fees to:**

(A) A local government, and any intervening applicant, that prevails on the appeal of a local government's approval; and

(B) An applicant that prevails on an appeal of a local government's denial.

(6) An application for an emergency shelter is not subject to approval under this section if, at the time of filing, the most recently completed point-in-time count, as reported to the United States Department of Housing and Urban Development under 24 C.F.R. part 578, indicated that the total sheltered and unsheltered homeless population was less than 0.18 percent of the state population, based on the latest estimate from the Portland State University Population Research Center.

SINGLE EXIT MULTIFAMILY DWELLINGS

SECTION 8. On or before October 1, 2025, the Department of Consumer and Business Services shall review and consider updates to the State of Oregon Structural Specialty Code through the Building Codes Structures Board established under ORS 455.132, to allow a residential occupancy to be served by a single exit, consistent with the following policies of this state:

(1) The reduction, to the extent practicable, of costs and barriers to the construction of midsize multifamily dwellings, including those offering family-size housing with sprinklers on smaller lots, while maintaining safety, public health and the general welfare with respect to construction and occupancy.

(2) Encouraging a variety of less expensive housing types that allow single-exit residential buildings under certain circumstances consistent with other adopted building codes.

(3) In adopting or considering updates to the building code under this section, the department shall consider regional variation in firefighting capacity and equipment and may make amendments to the code contingent upon a certification by a local fire official that the municipality has sufficient firefighting capacity and equipment.

PLANNED COMMUNITY ACT EXEMPTIONS

SECTION 9. ORS 94.550 is amended to read:

94.550. As used in ORS 94.550 to 94.783:

(1) "Assessment" means any charge imposed or levied by a homeowners association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to 94.783.

(2) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one lot in a planned community, or an agreement affecting more than one lot by which the developer holds such planned community under an option, contract to sell or trust agreement.

(3) "Class I planned community" means a planned community that:

(a) Contains at least 13 lots or in which the declarant has reserved the right to increase the total number of lots beyond 12; and

(b) Has an estimated annual assessment, including an amount required for reserves under ORS 94.595, exceeding \$10,000 for all lots or \$100 per lot based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.

(4) "Class II planned community" means a planned community that:

(a) Is not a Class I planned community;

- (b) Contains at least five lots; and
- (c) Has an estimated annual assessment exceeding \$1,000 for all lots based on:
 - (A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or
 - (B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.
- (5) "Class III planned community" means a planned community that is not a Class I or II planned community.
- (6) "Common expenses" means expenditures made by or financial liabilities incurred by the homeowners association and includes any allocations to the reserve account under ORS 94.595.
- (7) "Common property" means any real property or interest in real property within a planned community which is owned, held or leased by the homeowners association or owned as tenants in common by the lot owners, or designated in the declaration or the plat for transfer to the association.
- (8) "Condominium" means property submitted to the provisions of ORS chapter 100.
- (9) "Declarant" means any person who creates a planned community under ORS 94.550 to 94.783.
- (10) "Declarant control" means any special declarant right relating to administrative control of a homeowners association, including but not limited to:
 - (a) The right of the declarant or person designated by the declarant to appoint or remove an officer or a member of the board of directors;
 - (b) Any weighted vote or special voting right granted to a declarant or to units owned by the declarant so that the declarant will hold a majority of the voting rights in the association by virtue of such weighted vote or special voting right; and
 - (c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the association or board of directors of the association.
- (11) "Declaration" means the instrument described in ORS 94.580 which establishes a planned community, and any amendments to the instrument.
- (12) "Electric vehicle charging station" or "charging station" means a facility designed to deliver electrical current for the purpose of charging one or more electric motor vehicles.
- (13) "Electronic meeting" means a meeting that is conducted through telephone, teleconference, video conference, web conference or any other live electronic means where at least one participant is not physically present.
- (14) "Governing document" means articles of incorporation, bylaws, a declaration or a rule, regulation or resolution that was properly adopted by the homeowners association or any other instrument or plat relating to common ownership or common maintenance of a portion of a planned community that is binding upon lots within the planned community.
- (15) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority under a governing document to maintain commonly maintained property, to impose assessments on lots or to act on matters of common concern on behalf of lot owners within the planned community.
- (16) "Homeowners association" or "association" means the organization of owners of lots in a planned community, created under ORS 94.625, required by a governing document or formed under ORS 94.574.
- (17) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of the votes in the planned community.
- (18) "Mortgagee" means any person who is:
 - (a) A mortgagee under a mortgage;
 - (b) A beneficiary under a trust deed; or
 - (c) The vendor under a land sale contract.

(19) "Owner" means the owner of any lot in a planned community, unless otherwise specified, but does not include a person holding only a security interest in a lot.

(20) "Percent of owners" or "percentage of owners" means the owners representing the specified voting rights as determined under ORS 94.658.

(21)(a) "Planned community" means any subdivision under ORS 92.010 to 92.192 that results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which the owners collectively are responsible for the maintenance, operation, insurance or other expenses relating to any property within the planned community, including common property, if any, or for the exterior maintenance of any property that is individually owned.

(b) "Planned community" does not mean:

(A) A condominium under ORS chapter 100;

(B) A subdivision that is exclusively commercial or industrial; [or]

(C) A timeshare plan under ORS 94.803 to 94.945[.]; or

(D) A development established on or after January 1, 2024, in which each residential unit is either:

(i) Subject to an affordability restriction, including an affordable housing covenant, as defined in ORS 456.270; or

(ii) Owned by a public benefit or religious nonprofit corporation.

(22) "Purchaser" means any person other than a declarant who, by means of a voluntary transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

(23) "Purchaser for resale" means any person who purchases from the declarant more than two lots for the purpose of resale whether or not the purchaser for resale makes improvements to the lots before reselling them.

(24) "Recorded declaration" means an instrument recorded with the recording officer of the county in which the planned community is located that contains covenants, conditions and restrictions that are binding upon lots in the planned community or that impose servitudes on the real property.

(25) "Special declarant rights" means any rights, in addition to the rights of the declarant as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783, including but not limited to:

(a) Constructing or completing construction of improvements in the planned community which are described in the declaration;

(b) Expanding the planned community or withdrawing property from the planned community under ORS 94.580 (3) and (4);

(c) Converting lots into common property;

(d) Making the planned community subject to a master association under ORS 94.695; or

(e) Exercising any right of declarant control reserved under ORS 94.600.

(26) "Successor declarant" means the transferee of any special declarant right.

(27) "Turn over" means the act of turning over administrative responsibility pursuant to ORS 94.609 and 94.616.

(28) "Unit" means a building or portion of a building located upon a lot in a planned community and designated for separate occupancy or ownership, but does not include any building or portion of a building located on common property.

(29) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

REGULATION OF CONDOMINIUMS

SECTION 10. ORS 100.015 is amended to read:

100.015. The Real Estate Commissioner **has the exclusive right to regulate the submission of property to the provisions of this chapter and** may adopt such rules as are necessary for the administration of this chapter.

SECTION 11. ORS 100.022 is amended to read:

100.022. [(1)] **Except as provided under ORS 100.015 or explicitly required or allowed under this chapter, a zoning, subdivision, building code or other [real property law,] regulation by a public body, agency rule or local ordinance or regulation may not [prohibit]:**

(1) **Have the effect of prohibiting or restricting** the condominium form of ownership; or

(2) Impose any **restriction or requirement** upon a structure, **property** or development **that is submitted or proposed to be submitted to the condominium form of ownership under this chapter that it would not impose upon a structure or development under a different form of ownership[.], including:**

(a) **Any charge, tax or fee;**

(b) **A review or approval process by any person of a declaration, bylaw, plat, articles of incorporation, regulation, resolution or any other document relating to the condominium or the submission of the property or development to the condominium form of ownership;**

(c) **Any additional permitting requirements or conditions of approval of the property or development; or**

(d) **Any other requirements.**

[(2) *Except as set forth in this section, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code or other real property use law, ordinance or regulation.*]

[(3) *Subsection (1) of This section does not prohibit any governmental approval required under this chapter.*]

SECTION 12. ORS 100.110 is amended to read:

100.110. (1)(a) Before a declaration, supplemental declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor of the county in which the property is located and the Real Estate Commissioner.

(b) Before a declaration, supplemental declaration or, if required under subsection (3) of this section, an amendment thereto may be recorded, it must be approved by the tax collector of the county in which the property is located.

(c) A declaration, supplemental declaration or amendment thereto may not be approved unless the requirements of subsections (2) to (7) of this section are met. Approval must be evidenced by execution of the declaration or amendment or by a written approval attached thereto.

(d) If the requirements of subsections (2) to (7) of this section are met, the commissioner, county assessor and tax collector, if applicable,[:]

[(A)] shall approve the declaration, supplemental declaration or amendment[:; and]

[(B) *May not impose additional requirements not specified in subsections (2) to (7) of this section*].

(2) The county assessor of the county in which the property is located shall approve a declaration, supplemental declaration or amendment thereto if:

(a) The name complies with ORS 100.105 (5) and (6); and

(b) The plat complies with the requirements of ORS 100.115 or the plat amendment complies with ORS 100.116.

(3) The tax collector of the county in which the property is located shall approve the declaration or supplemental declaration, or an amendment that adds property to the condominium, changes the boundary of a unit or creates an additional unit from all or parts of other units or from all or parts of other units and common elements for which a plat amendment is required under ORS 100.116, if:

(a) All ad valorem taxes, special assessments, fees, or other charges required by law to be placed upon the tax roll for the affected units that have or will become a lien upon the property during the tax year have been paid;

(b) Advance payment of ad valorem taxes, special assessments, fees or other charges for the affected units that are not on the tax roll and for which payment is required under paragraph (a) of this subsection has been made to the tax collector utilizing the procedures contained in ORS 92.095 and 311.370; and

(c) The additional taxes, penalty, and any interest attributable thereto, required because of disqualification of the affected units from any special assessment have been paid.

(4) Subject to subsection (6) of this section, the commissioner shall approve the declaration or amendment thereto if:

(a) The declaration or the amendment thereto complies with the requirements of ORS 100.105 and 100.135 and other provisions of this chapter;

(b) The bylaws adopted under ORS 100.410 comply with the requirements of ORS 100.410 and 100.415 and other provisions of this chapter;

(c) The plat complies with the requirements of ORS 100.115 or the plat amendment complies with ORS 100.116 and other provisions of this chapter;

(d) The declaration is for a conversion condominium and the declarant has submitted:

(A) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and that the notice period has expired;

(B) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and copies of the written consent of any tenants as provided in ORS 100.305 (6) or a signed statement that no tenants were entitled to notice under ORS 100.305; or

(C) Any applicable combination of the requirements of subparagraphs (A) and (B) of this paragraph;

(e) A copy of the plat executed by the declarant and prepared in conformance with ORS 100.115 or plat amendment prepared in conformance with ORS 100.116 is submitted;

(f) A certification of plat execution, on a form prescribed and furnished by the commissioner, is:

(A) Executed by the declarant, the professional land surveyor who signed the surveyor's certificate on the plat, the attorney for the declarant, a representative of the title insurance company that issued the information required under ORS 100.640 (1)(e) or 100.668 (2)(d) or another person authorized by the declarant in writing to execute the certification; and

(B) Submitted stating that the copy is a true copy of the plat signed by the declarant; and

(g) A copy of a reserve study has been submitted, if a disclosure statement was issued under ORS 100.655 and the reserve study was not included pursuant to ORS 100.640 (1)(g).

(5) The commissioner shall approve a supplemental declaration if:

(a) The supplemental declaration complies with the requirements of ORS 100.120 and other provisions of this chapter;

(b) The supplemental plat complies with the requirements of ORS 100.115;

(c) The supplemental declaration is for a conversion condominium and the declarant has complied with the requirements of subsection (4)(d) of this section; and

(d) A copy of the supplemental plat and a certification of plat execution described in subsection (4)(e) and (f) of this section have been submitted.

(6) Approval by the commissioner is not required for an amendment to a declaration transferring the right of use of a limited common element pursuant to ORS 100.515 (5).

(7) Before the commissioner approves the declaration, supplemental declaration or amendment thereto under this section:

(a) The declarant or other person requesting approval shall pay to the commissioner a fee determined by the commissioner under ORS 100.670; and

(b) For an amendment or supplemental declaration, the Condominium Information Report and the Annual Report described in ORS 100.260 must be designated current by the Real Estate Agency as provided in ORS 100.255 and the fee required under ORS 100.670 must be paid.

(8) If the declaration, supplemental declaration or amendment thereto approved by the commissioner under subsection (4) or (5) of this section is not recorded in accordance with ORS 100.115 within one year from the date of approval by the commissioner, the approval automatically expires and the declaration, supplemental declaration or amendment thereto must be resubmitted for approval in accordance with this section. The commissioner's approval must set forth the date on which the approval expires.

SECTION 13. ORS 100.115 is amended to read:

100.115. (1) A plat of the land described in the declaration or a supplemental plat described in a supplemental declaration, complying with ORS 92.050, 92.060 (1) and (2), 92.080 and 92.120, shall be recorded simultaneously with the declaration or supplemental declaration. The plat or supplemental plat shall be titled in accordance with subsection (3) of this section and shall:

(a) Show the location of:

(A) All buildings and public roads. The location shall be referenced to a point on the boundary of the property; and

(B) For a condominium containing units described in ORS 100.020 (3)(b)(C) or (D), the moorage space or floating structure. The location shall be referenced to a point on the boundary of the up-land property regardless of a change in the location resulting from a fluctuation in the water level or flow.

(b) Show the designation, location, dimensions and area in square feet of each unit including:

(A) For units in a building described in ORS 100.020 (3)(b)(A), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(B) For a space described in ORS 100.020 (3)(b)(B), the horizontal boundaries of each unit and the common elements to which each unit has access. If the space is located within a structure, the vertical boundaries also shall be shown and referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(C) For a moorage space described in ORS 100.020 (3)(b)(C), the horizontal boundaries of each unit and the common elements to which each unit has access; and

(D) For a floating structure described in ORS 100.020 (3)(b)(D), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to an assumed elevation of an identified point on the floating structure even though the assumed elevation may change with the fluctuation of the water level where the floating structure is moored.

(c) Identify and show, to the extent feasible, the location and dimensions of all limited common elements described in the declaration. The plat may not include any statement indicating to which unit the use of any noncontiguous limited common element is reserved.

(d) Include a statement, including signature and official seal, of a registered architect, registered professional land surveyor or registered professional engineer certifying that the plat fully and accurately depicts the boundaries of the units of the building and that construction of the units and buildings as depicted on the plat has been completed, except that the professional land surveyor who prepared the plat need not affix a seal to the statement.

(e) Include a surveyor's certificate, complying with ORS 92.070, that includes information in the declaration in accordance with ORS 100.105 (1)(a) and a metes and bounds description or other description approved by the city or county surveyor.

(f) Include a statement by the declarant that the property and improvements described and depicted on the plat are subject to the provisions of ORS 100.005 to 100.627.

[(g) Include such signatures of approval as may be required by local ordinance or regulation.]

[(h)] (g) Include any other information or data not inconsistent with the declaration that the declarant desires to include.

[(i)] (h) If the condominium is a flexible condominium, show the location and dimensions of all variable property identified in the declaration and label the variable property as "WITHDRAWABLE VARIABLE PROPERTY" or "NONWITHDRAWABLE VARIABLE PROPERTY," with a letter different from those designating a unit, building or other tract of variable property. If there is more than one tract, each tract shall be labeled in the same manner.

(2) The supplemental plat required under ORS 100.150 (1) shall be recorded simultaneously with the supplemental declaration. The supplemental plat shall be titled in accordance with subsection (3) of this section and shall:

(a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120 and subsection (3) of this section.

(b) If any property is withdrawn:

(A) Show the resulting perimeter boundaries of the condominium after the withdrawal; and

(B) Show the information required under subsection [(1)(i)] (1)(h) of this section as it relates to any remaining variable property.

(c) If any property is reclassified, show the information required under subsection (1)(a) to (d) of this section.

(d) Include a “Declarant’s Statement” that the property described on the supplemental plat is reclassified or withdrawn from the condominium and that the condominium exists as described and depicted on the plat.

(e) Include a surveyor’s certificate complying with ORS 92.070.

(3) The title of each supplemental plat described in ORS 100.120 shall include the complete name of the condominium, followed by the additional language specified in this subsection and the appropriate reference to the stage being annexed or tract of variable property being reclassified. Each supplemental plat for a condominium recorded on or after January 1, 2002, shall be numbered sequentially and shall:

(a) If property is annexed under ORS 100.125, include the words “Supplemental Plat No. _____: Annexation of Stage _____”; or

(b) If property is reclassified under ORS 100.150, include the words “Supplemental Plat No. _____: Reclassification of Variable Property, Tract _____.”

(4) Upon request of the county surveyor or assessor, the person offering a plat or supplemental plat for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor.

(5) Before a plat or a supplemental plat may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. Before approving the plat as required by this section, the city or county surveyor shall:

(a) Check the boundaries of the plat and units and take measurements and make computations necessary to determine that the plat complies with this section.

(b) Determine that the name complies with ORS 100.105 (5) and (6).

(c) Determine that the following are consistent:

(A) The designation and area in square feet of each unit shown on the plat and the unit designations and areas contained in the declaration in accordance with ORS 100.105 (1)(d);

(B) Limited common elements identified on the plat and the information contained in the declaration in accordance with ORS 100.105 (1)(h);

(C) The description of the property in the surveyor’s certificate included on the plat and the description contained in the declaration in accordance with ORS 100.105 (1)(a); and

(D) For a flexible condominium, the variable property depicted on the plat and the identification of the property contained in the declaration in accordance with ORS 100.105 (7)(c).

(6) The person offering the plat or supplemental plat for approval shall:

(a) Submit a copy of the proposed declaration and bylaws or applicable supplemental declaration at the time the plat is submitted; and

(b) Submit the original or a copy of the executed declaration and bylaws or the applicable supplemental declaration approved by the commissioner if required by law prior to approval.

(7) For performing the services described in subsection (5)(a) to (c) of this section, the city surveyor or county surveyor shall collect from the person offering the plat for approval a fee of \$150 plus \$25 per building. The governing body of a city or county may establish a higher fee by resolution or order.

SECTION 14. ORS 100.105 is amended to read:

100.105. (1) A declaration must contain:

(a) A description of the property, including property on which a unit or a limited common element is located, whether held in fee simple, leasehold, easement or other interest or combination thereof, that is being submitted to the condominium form of ownership and that conforms to the description in the surveyor's certificate provided under ORS 100.115 (1).

(b) Subject to subsection (11) of this section, a statement of the interest in the property being submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other interest or combination thereof.

(c) Subject to subsections (5) and (6) of this section, the name by which the property is known and a general description of each unit and the building or buildings, including the number of stories and basements of each building, the total number of units and the principal materials of which they are constructed.

(d) The unit designation, a statement that the location of each unit is shown on the plat, a description of the boundaries and area in square feet of each unit and any other data necessary for proper identification. The area of a unit must be the same as shown for that unit on the plat described in ORS 100.115 (1).

(e) A notice in substantially the following form in at least 12-point type in all capitals or bold-face:

NOTICE

THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.

(f) A description of the general common elements.

(g) An allocation to each unit of an undivided interest in the common elements in accordance with ORS 100.515 and the method used to establish the allocation.

(h) The designation of any limited common elements including:

(A) A general statement of the nature of the limited common element;

(B) A statement of the unit to which the use of each limited common element is reserved, provided the statement is not a reference to an assignment of use specified on the plat; and

(C) The allocation of use of any limited common element appertaining to more than one unit.

(i) The method of determining liability for common expenses and right to common profits in accordance with ORS 100.530.

(j) The voting rights allocated to each unit in accordance with ORS 100.525 or, in the case of condominium units committed as property in a timeshare plan defined in ORS 94.803, the voting rights allocated in the timeshare instrument.

(k) A statement of the general nature of use, residential or otherwise, for which the building or buildings and each of the units is intended.

(L) A statement that the designated agent to receive service of process in cases provided in ORS 100.550 (1) is named in the Condominium Information Report which will be filed with the Real Estate Agency in accordance with ORS 100.250 (1)(a).

(m) The method of amending the declaration and the percentage of voting rights required to approve an amendment of the declaration in accordance with ORS 100.135.

(n) A statement as to whether or not the association of unit owners pursuant to ORS 100.405 (5) and (8) has authority to grant leases, easements, rights of way, licenses and other similar interests affecting the general and limited common elements of the condominium and consent to vacation of roadways within and adjacent to the condominium.

(o) If the condominium contains a floating structure described in ORS 100.020 (3), a statement regarding the authority of the board of directors of the association, subject to ORS 100.410, to temporarily relocate the floating structure without a majority vote of affected unit owners.

(p) Any restrictions on alienation of units. Any such restrictions created by documents other than the declaration may be incorporated by reference in the declaration to the official records of the county in which the property is located.

(q) Any other details regarding the property that the person executing the declaration considers desirable. However, if a provision required to be in the bylaws under ORS 100.415 is included in the declaration, the voting requirements for amending the bylaws also govern the amendment of the provision in the declaration.

(2) In the event the declarant proposes to annex additional property to the condominium under ORS 100.125, the declaration also must contain a general description of the plan of development, including:

(a) The maximum number of units to be included in the condominium.

(b) The date after which any right to annex additional property will terminate.

(c) A general description of the nature and proposed use of any additional common elements which declarant proposes to annex to the condominium, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(d) A statement that the method used to establish the allocation of undivided interest in the common elements, the method used to determine liability for common expenses and right to common profits and the method used to allocate voting rights for each unit annexed is as stated in the declaration in accordance with subsection (1)(g), (i) and (j) of this section.

(e) Such other information as the Real Estate Commissioner requires in order to carry out the purposes of this chapter.

(3) Unless expressly prohibited by the declaration and subject to the requirements of ORS 100.135 (2) and subsections (9) and (10) of this section:

(a) Not later than two years following the termination date specified in subsection (2)(b) of this section, the termination date may be extended for a period not exceeding five years.

(b) Before the termination date specified in the declaration or supplemental declaration under subsection (7)(d) of this section, the termination date may be extended for a period not exceeding five years.

(c) The general description under subsection (2)(c) of this section and the information included in the declaration or supplemental declaration in accordance with subsection (7)(c), (g) and (h) of this section may be changed by an amendment to the declaration or supplemental declaration and plat or supplemental plat.

(4) The information included in the declaration or supplemental declaration in accordance with subsection (2)(a) and (d) of this section and subsection (7)(a), (b), (e), (f) and (k) of this section may not be changed unless all owners agree to the change and an amendment to the declaration or supplemental declaration and, if applicable, the plat or supplemental plat are recorded in accordance with this chapter.

(5) The name of the property shall include the word "condominium" or "condominiums" or the words "a condominium."

(6) A condominium may not bear a name which is the same as or deceptively similar to the name of any other, **different** condominium located in the same county.

(7) If the condominium is a flexible condominium containing variable property, the declaration shall also contain a general description of the plan of development, including:

(a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.

(b) A statement:

(A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent of any unit owner is required, and if so, a statement of the method by which the consent is ascertained; or

(B) That there are no limitations on rights reserved under ORS 100.150 (1).

(c) A statement of the total number of tracts of variable property within the condominium, including:

(A) A designation of each tract as withdrawable variable property or nonwithdrawable variable property;

(B) Identification of each variable tract by a label in accordance with ORS 100.115 [(1)(i)] **(1)(h)**;

(C) A statement of the method of labeling each tract depicted on the plat in accordance with ORS 100.115 [(1)(i)] **(1)(h)**; and

(D) A statement of the total number of tracts of each type of variable property.

(d) The termination date, which is the date after which any right reserved under ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any right on or before the date specified. Subject to ORS 100.120, the termination date from the date of recording of the conveyance of the first unit in the condominium to a person other than the declarant may not exceed:

(A) Twenty years, only if a condominium consists, or may consist if the condominium is a flexible condominium, exclusively of units to be used for nonresidential purposes; or

(B) Seven years.

(e) The maximum number of units that may be created.

(f) A statement that the method used to establish the allocations of undivided interest in the common elements, the method used to determine liability for common expenses and right to common profits and the method used to allocate voting rights as additional units are created is the same as stated in the declaration in accordance with subsection (1)(g), (i) and (j) of this section.

(g) A general description of all existing improvements and the nature and proposed use of any improvements that may be made on variable property if the improvements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(h) A statement of whether or not the declarant reserves the right to create limited common elements within any variable property, and if so, a general description of the types that may be created.

(i) A statement that the plat shows the location and dimensions of all withdrawable variable property that is labeled "WITHDRAWABLE VARIABLE PROPERTY."

(j) A statement that if by the termination date all or a portion of the withdrawable variable property has not been withdrawn or reclassified, the withdrawable variable property is automatically withdrawn from the condominium as of the termination date.

(k) A statement of the rights of the association under ORS 100.155 (2).

(L) A statement of whether or not all or any portion of the variable property may not be withdrawn from the condominium and, if so, with respect to the nonwithdrawable variable property:

(A) A statement that the plat shows the location and dimensions of all nonwithdrawable variable property that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."

(B) A description of all improvements that may be made and a statement of the intended use of each improvement.

(C) A statement that, if by the termination date all or a portion of the variable property designated as "nonwithdrawable variable property" has not been reclassified, the property is automatically reclassified as of the termination date as a general common element of the condominium and any interest in the property held for security purposes is automatically extinguished by the classification.

(D) A statement of the rights of the association under ORS 100.155 (3).

(m) A statement by the local governing body or appropriate department thereof that the withdrawal of any variable property designated as "withdrawable variable property" in the declaration in accordance with paragraph (L) of this subsection, will not violate any applicable planning or zoning regulation or ordinance. The statement may be attached as an exhibit to the declaration.

(8) The plan of development for any variable property included in the declaration or any supplemental declaration of any stage in accordance with subsection (7) of this section is subject to any

plan of development included in the declaration in accordance with subsection (2) of this section, except that the time limitation specified in subsection (7)(d) of this section governs any right reserved under ORS 100.150 (1) with respect to any variable property.

(9) The information included in the declaration in accordance with subsection (7)(j), (k) and (m) of this section may not be deleted by amendment.

(10)(a) Approval by the unit owners is not required for a declarant to redesignate withdrawable variable property as “nonwithdrawable variable property” under ORS 100.150 (1) by supplemental declaration and supplemental plat, for any reason, including if the redesignation is required by the local governing body to comply with any planning or zoning regulation or ordinance.

(b) If as a result of a redesignation under paragraph (a) of this subsection, the information required to be included in the supplemental declaration under subsection (7)(L)(B) of this section is inconsistent with the information included in the declaration or supplemental declaration in accordance with subsection (7)(g) of this section, an amendment to the declaration or supplemental declaration and plat or supplemental plat approved by at least 75 percent of owners is required.

(11) The statement of an interest in property other than fee simple submitted to the condominium form of ownership and any easements, rights or appurtenances belonging to property submitted to the condominium form of ownership, whether leasehold or fee simple, must include:

(a) A reference to the recording index numbers and date of recording of the instrument creating the interest; or

(b) A reference to the law, administrative rule, ordinance or regulation that creates the interest if the interest is created under law, administrative rule, ordinance or regulation and not recorded in the office of the recording officer of the county in which the property is located.

SUBDIVIDING FOR DEVELOPMENT OF AFFORDABLE HOUSING

SECTION 15. ORS 92.090 is amended to read:

92.090. (1) Subdivision plat names shall be subject to the approval of the county surveyor or, in the case where there is no county surveyor, the county assessor. No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed. On or after January 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name, that has previously used block numbers or letters.

(2) No tentative plan for a proposed subdivision and no tentative plan for a proposed partition shall be approved unless:

(a) The streets and roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other respects unless the city or county determines it is in the public interest to modify the street or road pattern.

(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.

(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.

(3) No plat of a proposed subdivision or partition shall be approved unless:

(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.

(b) Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city or county.

(c) The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.

(d) The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.

(e) The subdivision or partition plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition.

(f) Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.

(4) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commission of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

(b) A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a domestic water supply system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted in the proposed subdivision plat; *and the amount of any such bond, irrevocable letter of credit, contract or other assurance by the subdivider shall be* **in an amount** determined by a registered professional engineer, subject to any change in such amount as determined necessary by the city or county; or

(c) *[In lieu of paragraphs (a) and (b) of this subsection,]* A statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in any public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

(5) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that a sewage disposal system will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

(b) A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a sewage disposal system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted on the proposed subdivision plat; *and the amount of such bond, irrevocable letter of credit, contract or other assurance shall be* **in an amount** determined by a registered professional engineer, subject to any change in such amount as the city or county considers necessary; or

(c) *[In lieu of paragraphs (a) and (b) of this subsection,]* A statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, where

the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (1)(b). A copy of any such statement, signed by the subdivider and indorsed by the city or county shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

(6) A city or county shall accept as other assurance, as used in subsections (4)(b) and (5)(b) of this section, one or more award letters from public funding sources made to a subdivider who is subdividing the property to develop affordable housing, that is or will be subject to an affordability restriction as defined in ORS 456.250 or an affordable housing covenant as defined in ORS 456.270, if the awards total an amount greater than the project cost.

[6] (7) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.

SINGLE ROOM OCCUPANCIES

SECTION 16. Section 17 of this 2023 Act and ORS 197.758 are added to and made a part of ORS 197.286 to 197.314.

SECTION 17. (1) As used in this section “single room occupancy” means a residential development with no fewer than four attached units that are independently rented and lockable and provide living and sleeping space for the exclusive use of an occupant, but require that the occupant share sanitary or food preparation facilities with other units in the occupancy.

(2) Within an urban growth boundary, each local government shall allow the development of a single room occupancy:

(a) With up to six units on each lot or parcel zoned to allow for the development of a detached single-family dwelling; and

(b) With the number of units consistent with the density standards of a lot or parcel zoned to allow for the development of residential dwellings with five or more units.

SECTION 18. ORS 197.303, as amended by section 27, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), is amended to read:

197.303. (1) As used in ORS 197.296 and this section, “needed housing” means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes the following housing types:

(a) Attached and detached single-family housing, middle housing types as described in ORS 197.758 and multiple family housing for both owner and renter occupancy;

- (b) Government assisted housing;
 - (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;
 - (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions;
 - (e) Agriculture workforce housing;
 - (f) Housing for individuals with a variety of disabilities related to mobility or communications that require accessibility features;
 - (g) Housing for older persons, as defined in ORS 659A.421; *[and]*
 - (h) Housing for college or university students, if relevant to the region[.]; **and**
 - (i) Single room occupancies as defined in section 17 of this 2023 Act.**
- (2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), Metro shall adopt findings and perform an analysis that estimates each of the following factors:
- (a) Projected needed housing units over the next 20 years;
 - (b) Current housing underproduction;
 - (c) Housing units needed for people experiencing homelessness; and
 - (d) Housing units projected to be converted into vacation homes or second homes during the next 20 years.
- (3) At the time Metro performs the analysis under subsection (2) of this section, Metro shall allocate a housing need for each city within Metro.
- (4) In making an allocation under subsection (3) of this section, Metro shall consider:
- (a) The forecasted population growth under ORS 195.033 or 195.036;
 - (b) The forecasted regional job growth;
 - (c) An equitable statewide distribution of housing for income levels described in section 2 (4), **chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001)** *[of this 2023 Act]*.
 - (d) The estimates made under subsection (2) of this section; and
 - (e) The purpose of the Oregon Housing Needs Analysis under section 1 (1), **chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001)** *[of this 2023 Act]*.
- (5) Metro shall make the estimate described in subsection (2) of this section using a shorter time period than since the last review under ORS 197.296 (2)(a)(B) if Metro finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.
- (6) Metro shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. Metro must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.
- (7) Subsection (1)(a) and (d) of this section does not apply to a city with a population of less than 2,500.
- (8) Metro may take an exception under ORS 197.732 to the definition of “needed housing” in subsection (1) of this section in the same manner that an exception may be taken under the goals.

SECTION 18a. If House Bill 2889 becomes law, section 18 of this 2023 Act (amending ORS 197.303) is repealed and ORS 197.303, as amended by section 27, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), and section 14, chapter __, Oregon Laws 2023 (Enrolled House Bill 2889), is amended to read:

197.303. (1) As used in ORS 197.296 and this section, “needed housing” means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes the following housing types:

(a) Attached and detached single-family housing, middle housing types as described in ORS 197.758 and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; [and]

(e) Agriculture workforce housing[.]; **and**

(f) Single room occupancies as defined in section 17 of this 2023 Act.

(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), Metro shall adopt findings and perform an analysis that estimates each of the following factors:

(a) Projected needed housing units over the next 20 years;

(b) Current housing underproduction;

(c) Housing units needed for people experiencing homelessness; and

(d) Housing units projected to be converted into vacation homes or second homes during the next 20 years.

(3) Metro shall make the estimate described in subsection (2) of this section using a shorter time period than since the last review under ORS 197.296 (2)(a)(B) if Metro finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.

(4) Metro shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. Metro must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.

(5) Subsection (1)(a) and (d) of this section does not apply to a city with a population of less than 2,500.

(6) Metro may take an exception under ORS 197.732 to the definition of “needed housing” in subsection (1) of this section in the same manner that an exception may be taken under the goals.

SECTION 19. Section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), is amended to read:

Sec. 23. (1) As used in ORS 197.286 to 197.314, and except as provided in subsection (2) of this section:

(a) “Needed housing” means housing by affordability level, as described in section 2 (4), **chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001) [of this 2023 Act]**, type, characteristics and location that is necessary to accommodate the city’s allocated housing need over the 20-year planning period in effect when the city’s housing capacity is determined.

(b) “Needed housing” includes the following housing types:

(A) Detached single-family housing, middle housing types as described in ORS 197.758 and multifamily housing that is owned or rented;

(B) Government assisted housing;

(C) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(D) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions;

(E) Housing for agricultural workers;

(F) Housing for individuals with a variety of disabilities, related to mobility or communications that require accessibility features;

(G) Housing for older persons, as defined in ORS 659A.421; [and]

(H) Housing for college or university students, if relevant to the region[.]; **and**

(I) Single room occupancies as defined in section 17 of this 2023 Act.

(2) Subsection (1)(b)(A) and (D) of this section does not apply to:

(a) A city with a population of less than 2,500.

- (b) A county with a population of less than 15,000.
- (3) At the time that a city is required to inventory its buildable lands under ORS 197.297 (1) or section 21 or 22, **chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001)** [of this 2023 Act], the city shall determine its needed housing under this section.
- (4) In determining needed housing the city must demonstrate that the projected housing types, characteristics and locations are:
 - (a) Attainable for the allocated housing need by income, including consideration of publicly supported housing;
 - (b) Appropriately responsive to current and projected market trends; and
 - (c) Responsive to the factors in ORS 197.290 (2)(b) to (d).

SITING DUPLEXES

SECTION 20. ORS 197.758 is amended to read:

197.758. (1) As used in this section:

(a) “Cottage clusters” means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) “Middle housing” means:

(A) Duplexes;

(B) Triplexes;

(C) Quadplexes;

(D) Cottage clusters; and

(E) Townhouses.

(c) “Townhouses” means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.

(2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(3) Except as provided in subsection (4) of this section, each city not within a metropolitan service district with a population of [more than 10,000] 2,500 or greater and less than 25,000 shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. Nothing in this subsection prohibits a local government from allowing middle housing types in addition to duplexes.

(4) This section does not apply to:

(a) Cities with a population of 1,000 or fewer;

(b) Lands not within an urban growth boundary;

(c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;

(d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or

(e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land’s potential for planned urban development.

(5) Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

(6) This section does not prohibit local governments from permitting:

- (a) Single-family dwellings in areas zoned to allow for single-family dwellings; or
- (b) Middle housing in areas not required under this section.

(7) A local government that amends its comprehensive plan or land use regulations relating to allowing additional middle housing is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

SECTION 21. Section 3, chapter 639, Oregon Laws 2019, is amended to read:

Sec. 3. (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations or amend its comprehensive plan to implement [section 2 of this 2019 Act] **ORS 197.758** no later than:

(a) June 30, 2021, for each city subject to [section 2 (3) of this 2019 Act; or] **ORS 197.758 (3) (2021 Edition);**

(b) June 30, 2022, for each local government subject to [section 2 (2) of this 2019 Act.] **ORS 197.758 (2); or**

(c) June 30, 2025, for each city subject to ORS 197.758 (3), as amended by section 20 of this 2023 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.

(3) A local government that has not acted within the time provided under subsection (1) of this section shall directly apply the model ordinance developed by the commission under subsection (2) of this section under ORS 197.646 (3) until the local government acts as described in subsection (1) of this section.

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and policies that include but are not limited to:

(a) Waiving or deferring system development charges;

(b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

(c) Assessing a construction tax under ORS 320.192 and 320.195.

[*(5) When a local government makes a legislative decision to amend its comprehensive plan or land use regulations to allow middle housing in areas zoned for residential use that allow for detached single-family dwellings, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.*]

SECTION 22. Section 4, chapter 639, Oregon Laws 2019, is amended to read:

Sec. 4. (1) [Notwithstanding section 3 (1) or (3) of this 2019 Act,] The Department of Land Conservation and Development may grant to a local government that is subject to [section 2 of this 2019 Act] **ORS 197.758** an extension of the time allowed to adopt land use regulations or amend its comprehensive plan under section 3, **chapter 639, Oregon Laws 2019** [of this 2019 Act].

(2) An extension under this section may be applied only to specific areas where the local government has identified water, sewer, storm drainage or transportation services that are [either] significantly deficient [or are expected to be significantly deficient before December 31, 2023,] and for which the local government has established a plan of actions that will remedy the deficiency in those services that is approved by the department. The extension may not extend beyond the date that the local government intends to correct the deficiency under the plan.

(3) In areas where the extension under this section does not apply, the local government shall apply its own land use regulations consistent with section 3 (1), **chapter 639, Oregon Laws 2019**, [of this 2019 Act] or the model ordinance developed under section 3 (2), **chapter 639, Oregon Laws 2019** [of this 2019 Act].

(4) A request for an extension by a local government must be filed with the department no later than:

(a) December 31, 2020, for a city subject to [section 2 (3) of this 2019 Act.] **ORS 197.758 (3) (2021 Edition).**

(b) June 30, 2021, for a local government subject to [section 2 (2) of this 2019 Act.] **ORS 197.758 (2)**.

(c) **June 30, 2024, for each city subject to ORS 197.758 (3), as amended by section 20 of this 2023 Act.**

(5) The department shall grant or deny a request for an extension under this section:

(a) Within 90 days of receipt of a complete request from a city subject to [section 2 (3) of this 2019 Act.] **ORS 197.758 (3)**.

(b) Within 120 days of receipt of a complete request from a local government subject to [section 2 (2) of this 2019 Act.] **ORS 197.758 (2)**.

(6) The department shall adopt rules regarding the form and substance of a local government's application for an extension under this section. The department may include rules regarding:

(a) Defining the affected areas;

(b) Calculating deficiencies of water, sewer, storm drainage or transportation services;

(c) Service deficiency levels required to qualify for the extension;

(d) The components and timing of a remediation plan necessary to qualify for an extension;

(e) Standards for evaluating applications; and

(f) Establishing deadlines and components for the approval of a plan of action.

SECTION 23. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$1,250,000, to provide grants to local governments to assist them in amending their comprehensive plans as required under section 3 (1)(c), chapter 639, Oregon Laws 2019.

REMOVING RECORDED DISCRIMINATORY PROVISIONS

SECTION 24. Section 25 of this 2023 Act is added to and made a part of ORS chapter 93.

SECTION 25. (1) Notwithstanding ORS 94.590, 94.625, 100.110, 100.135, 100.411 or 100.413 or any requirement of the declaration or bylaws, an amendment to the declaration or bylaws of a planned community or condominium is effective and may be made and recorded in the county clerk's office of a county in which any portion of the property is situated without the vote of the owners or the board members and without the prior approval of the Real Estate Commissioner, county assessor or any other person if:

(a) The amendment is made to conform the declarations or bylaws to the requirements of ORS 93.270 (2); and

(b) The amendment is signed by the president and secretary of the homeowners association.

(2) The first page or cover sheet of an instrument amending the declaration or bylaws must comply with the recording requirements of ORS chapter 205 and must be in substantially the following form:

AMENDMENT OF [DECLARATION/BYLAWS] TO COMPLY WITH ORS 93.270 (2).

Pursuant to this section, the undersigned states:

1. The undersigned are the president and secretary for the [homeowners/condominium owners] association _____ (name) in _____ County.

2. This document amends the [declaration/bylaws] of the association.

3. The [declaration was/bylaws were] first recorded under instrument number (or book and page number) _____ recorded on _____.

4. The [declaration was/bylaws were] most recently amended or restated, if ever, under instrument number (or book and page number) _____ recorded on _____.

5. The undersigned have determined that the current [declarations/bylaws] of the [planned community/condominium], as last amended or revised, may fail to comply with ORS 93.270. The following amendments to the [declaration/bylaws] remove provisions that are not allowed and are unenforceable under ORS 93.270 (2). No other changes to the document are being made except as may be necessary to correct scriveners' errors or to conform format and style.

6. Under this section, a vote of the association is not required.

7. The description of the real property in _____ County affected by this document is:

Dated this _____ day of _____ 20____.

Name: _____
President, _____ (association name)
Address: _____

Phone No.: _____

Dated this _____ day of _____ 20____.

Name: _____
Secretary, _____ (association name)
Address: _____

Phone No.: _____

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 20____ by _____ and _____.

Notary Public for Oregon
My commission expires: _____

(3) If an instrument recorded under this section affects a condominium, the condominium association shall file a copy of the recorded instrument with the Real Estate Commissioner.

SECTION 26. Section 4, chapter 67, Oregon Laws 2021, as amended by section 5b, chapter 367, Oregon Laws 2021, is amended to read:

Sec. 4. (1) On or before December 31, [2022] **2024**, each homeowners association **of a planned community first established before September 1, 2021**, shall review [each governing document currently binding on the planned community, or the lots or the lot owners within] **the declaration and bylaws of the planned community** and shall:

(a) Amend [*or restate*] each document as necessary to remove all restrictions against the use of the community or the lots not allowed under ORS 93.270 (2) **as provided under section 25 of this 2023 Act**; or

(b) Execute and record a [*declaration*] **certification** that the homeowners association has reviewed the [*governing documents binding on*] **declaration and bylaws** of the planned community and that the documents do not contain any restriction, rule or regulation against the use of the community or the lots by a person or group of persons because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits.

(2) [*Notwithstanding ORS 94.590 or 94.625 or any requirement of the declaration or bylaws, an amendment to or a restatement of the declaration or bylaws under subsection (1)(a) of this section is effective and*] **A certification under subsection (1)(b) of this section:**

(a) May be recorded without the vote of the owners or the board members [*if the amendment or restatement includes a certification signed by the president and secretary of the homeowners association that the amended or restated declaration or bylaws does not change that document except as required under this section and as may be necessary to correct scrivener's errors or to conform format and style.*]; **and**

(b) **Must be in substantially the following form:**

CERTIFICATION OF COMPLIANCE WITH ORS 93.270 (2).

Pursuant to section 4, chapter 67, Oregon Laws 2021, the undersigned states:

1. The undersigned are the president and secretary for the homeowners association _____ (name) in _____ County.

2. The declaration was first recorded under instrument number (or book and page number) _____ recorded on _____. The declaration was most recently amended or restated, if ever, under instrument number _____ recorded on _____.

3. The bylaws were first recorded, if ever, under instrument number (or book and page number) _____ recorded on _____. The bylaws were most recently amended or restated, if ever, under instrument number _____ recorded on _____.

4. The undersigned have determined that the current declarations and bylaws of the planned community, as last amended or revised, conform with ORS 93.270 (2) and that there are no provisions that would restrict the use of the community or the lots or units of the community because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits. Any such provision that may inadvertently remain is void and unenforceable.

5. Under this section, a vote of the association is not required.

6. The description of the real property in _____ County affected by this document is:

Dated this _____ day of _____ 20_____.

Name: _____

President, _____ (association name)

Dated this _____ day of _____ 20_____.

Name: _____
Secretary, _____ (association name)

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____
20____ by _____ and _____.

Notary Public for Oregon
My commission expires: _____

SECTION 27. Section 6, chapter 67, Oregon Laws 2021, as amended by section 5c, chapter 367, Oregon Laws 2021, is amended to read:

Sec. 6. (1) On or before December 31, [2022] **2024**, each association of a condominium **first established before September 1, 2021**, that includes units used for residential purposes shall review [each governing document currently binding on the condominium or the units or unit owners within] **the declaration and bylaws of the condominium and shall:**

(a) Amend [or restate] each document as necessary to remove all restrictions against the use of the condominium or the units not allowed under ORS 93.270 (2) **as provided under section 25 of this 2023 Act;** or

(b) Execute and record a [declaration] **certification** that the association has reviewed the [governing documents binding on] **declaration and bylaws of the condominium** and that the documents do not contain any restriction, rule or regulation against the use of the condominium or the units by a person or group of persons because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits.

(2) [Notwithstanding ORS 100.110, 100.135, 100.413 or any requirement of the declaration or bylaws, an amendment to or a restatement of the declaration or bylaws under this section, upon submission and approval of the Real Estate Commissioner under ORS 100.123, 100.125, 100.668 and 100.675, is effective and] **A certification under subsection (1)(b) of this section:**

(a) May be recorded without the vote of the owners or the board members [if the amended or restated declaration or bylaws includes a certification signed by the president and secretary of the association that the amended or restated declaration or bylaws does not change that document except as required under this section and as may be necessary to correct scrivener's errors or to conform format and style.]; **and**

(b) **Must be in substantially the following form:**

CERTIFICATION OF COMPLIANCE WITH ORS 93.270 (2).

Pursuant to section 6, chapter 67, Oregon Laws 2021, the undersigned states:

1. The undersigned are the president and secretary for the condominium owners association _____ (name) in _____ County.

2. The declaration was first recorded under instrument number (or book and page number) _____ recorded on _____. The declaration was most recently amended or restated, if ever, under instrument number _____ recorded on _____.

3. The bylaws were first recorded, if ever, under instrument number (or book and page number) _____ recorded on _____. The bylaws were most recently amended or restated, if ever, under instrument number _____ recorded on _____.

4. The undersigned have determined that the current declarations and bylaws of the condominium, as last amended or revised, conform with ORS 93.270 (2) and that there are no provisions that would restrict the use of the community or the lots or units of the community because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits. Any such provision that may inadvertently remain is void and unenforceable.

5. Under this section, a vote of the association is not required.

6. The description of the real property in _____ County affected by this document is:

Dated this _____ day of _____ 20_____.

Name: _____
President, _____ (association name)
Dated this _____ day of _____ 20_____.

Name: _____
Secretary, _____ (association name)

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 20____ by _____ and _____.

Notary Public for Oregon
My commission expires: _____

SECTION 28. (1) The amendments to sections 4 and 6, chapter 67, Oregon Laws 2021, by sections 26 and 27 of this 2023 Act are intended to extend the deadline for compliance with those sections and to clarify the process by which associations may comply with those sections.

(2) Sections 4 and 6, chapter 67, Oregon Laws 2021, as amended by sections 26 and 27 of this 2023 Act, do not apply to a planned community or condominium that:

(a) Was established on or after September 1, 2021; or

(b) Complied with the requirements of section 4 or 6, chapter 67, Oregon Laws 2021, that were in effect before the effective date of this 2023 Act, notwithstanding the former deadline for compliance of December 31, 2022.

AFFORDABLE HOUSING ON PUBLIC UTILITY LANDS

SECTION 29. (1) As used in this section, “affordable housing” means affordable housing as defined in ORS 197.308 or publicly supported housing as defined in ORS 456.250.

(2)(a) To facilitate the development of affordable housing in this state, the Public Utility Commission may allow a public utility to sell, or to convey at below market price or as a gift, the public utility's interest in real property for the purpose of the real property being used for the development of affordable housing.

(b) The instrument that conveys, or contracts to convey, the public utility's interest in the real property must include an affordable housing covenant as provided in ORS 456.270 to 456.295.

(3) A public utility may not recover costs from customers for selling, or conveying at below market price or as a gift, the public utility's interest in real property under this section.

HOUSING SUPPORT FOR LOW-INCOME COLLEGE STUDENTS

SECTION 30. The Department of Human Services shall provide financial support to nonprofit organizations providing affordable housing support to low-income college students across this state in accordance with the department's self-sufficiency programs.

SECTION 31. Section 30 of this 2023 Act is repealed on January 2, 2026.

SECTION 32. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Human Services, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$4,000,000 to provide financial support to nonprofit organizations under section 30 of this 2023 Act.

SECTION 32a. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (3), chapter __, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, for self-sufficiency programs, is increased by \$244,963 to administer financial support to nonprofit organizations pursuant to the provisions of section 30 of this 2023 Act.

COMMUNITY HOUSING SUPPORTING AGRICULTURAL EMPLOYEES

SECTION 33. Section 34 of this 2023 Act is added to and made a part of ORS 456.548 to 456.725.

SECTION 34. (1) As used in this section, "community housing supporting agricultural employees" means a housing development that:

- (a) Is within an urban growth boundary;
- (b) Is within 20 miles of significant agricultural employment as identified by the Housing and Community Services Department;
- (c) Is promoted for residential use by agricultural employees and developed with amenities suitable for agricultural employees and their families;
- (d) Consists of a multifamily dwelling or a cluster of buildings, including manufactured, prefabricated or modular housing, housing produced through a three-dimensional printing process or other housing developed using innovative construction types; and
- (e)(A) Is subject to an affordable housing covenant requiring that the units are maintained for a period of no less than 60 years as affordable to rent for low income households, as described in ORS 456.270 to 456.295;
- (B) Is operated as a consumer housing cooperative; or
- (C) Is operated under a model approved by the department designed to preserve affordability or control of the property by its residents.

(2) The Housing and Community Services Department shall provide one or more grants to qualified housing sponsors for the purposes of developing community housing supporting agricultural employees.

(3) In awarding grants under this section, the department shall prioritize applications:

(a) From a developer that is a nonprofit housing corporation that serves agricultural workers;

(b) From a developer that is a nonprofit that promotes housing for agricultural employees or other needs of agricultural employees, or from a developer that has entered into a partnership with a nonprofit housing corporation that serves agricultural workers for the purposes of developing the community housing;

(c) Where other funding for the housing development has been dedicated or can be leveraged by the grant;

(d) Where the housing development will be located close to significant agricultural employment; or

(e) Where the housing development will include or will be near specific characteristics or amenities designed to support or attract agricultural employees and their families.

(4) Grants awarded under this section may be used for any project costs for the development or predevelopment of the community housing supporting agricultural employees.

(5) A qualified housing sponsor receiving grants under this section shall agree to provide information to the department to report to an appropriate interim committee of the Legislative Assembly, in the manner provided in ORS 192.245, on the use of the grant on or before September 15, 2027.

SECTION 35. Section 34 of this 2023 Act is repealed on January 2, 2028.

SECTION 36. In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$10,000,000, to award and administer grants under section 34 of this 2023 Act.

LOCAL GOVERNMENT HOUSING SUPPORT

SECTION 37. (1) The Oregon Department of Administrative Services, in consultation with the Department of Land Conservation and Development and the Housing and Community Services Department, shall provide grants to councils of governments, as defined in ORS 294.900, and economic development districts to support housing and community development capacity within cities and counties in this state and within the nine federally recognized Indian tribes in this state.

(2) Councils of governments and economic development districts receiving grants under this section shall partner and consult with local governments, developers, financiers, the Department of Land Conservation and Development, the Housing and Community Services Department, other relevant state agencies and other interested public and private partners to enable local governments throughout the region to encourage community development and the development of infrastructure and needed housing, as defined in section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), by:

(a) Bridging any information gaps;

(b) Identifying and securing needed resources, including infrastructure and community facilities;

(c) Connecting producers of needed housing with consumers of needed housing; and

(d) Working with representatives of historically underrepresented groups to overcome community-specific barriers to obtaining housing.

SECTION 38. Section 37 of this 2023 Act is repealed on January 2, 2034.

SECTION 39. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Department of Administrative Services, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$5,000,000, to provide grants under section 37 of this 2023 Act.

AFFORDABLE HOMEOWNERSHIP REVOLVING LOAN FUND

SECTION 40. (1) The Housing and Community Services Department shall make a grant to the Network for Oregon Affordable Housing (NOAH) to establish a revolving loan fund that will allow a first-time home buyer who is purchasing a home, including a share of a cooperative or a condominium unit, in which the purchaser's equity will be limited, to establish equity at a faster rate while making monthly payments similar to those described in subsection (3)(a)(A) of this subsection. The department may not make a grant under this section until NOAH has demonstrated that it has dedicated to a loan fund described in this section no less than \$7,500,000 of additional private moneys.

(2) Loans made from the loan fund must be used for the purchase of a dwelling that is subject to an affordability restriction, such as a restriction as described in ORS 456.270 to 456.295, that:

(a) Has the effect of limiting the purchaser's ability to gain equity from the appreciation of the dwelling's value; and

(b) Requires that the purchaser be a low income household as defined in ORS 456.270.

(3) Loans made from the loan fund must:

(a) Be made only to applicants that have met with an approved or certified housing counseling agency, as described in 24 C.F.R. 214 subpart B, and have a first-time home buyer program offered by the agency;

(b) Have a term of 20 years or less; and

(c) Have a fixed interest rate that is not more than the greater of:

(A) The rate that would allow monthly amortized principal and interest payments under the term of the loan to be the amount that would result from a 30-year fixed-rate amortized mortgage at the national current average rate as published by a reputable financial source; or

(B) 0.5 percent.

SECTION 41. Section 40 of this 2023 Act is repealed on January 2, 2026.

SECTION 42. In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$7,500,000, to make a grant under section 40 of this 2023 Act.

SECTION 43. On or before September 15, 2025, and on or before September 15, 2027, the Housing and Community Services Department shall provide a report to an appropriate interim committee of the Legislative Assembly, in the manner provided in ORS 192.245, on the use of the loan funds described in section 40 of this 2023 Act, as reported to the department by the Network for Oregon Affordable Housing (NOAH).

AFFORDABLE HOUSING LOAN GUARANTEE FUND

SECTION 44. Section 45 of this 2023 Act is added to and made a part of ORS chapter 458.

SECTION 45. (1) The Housing and Community Services Department shall provide grants to one or more nonprofit corporations to develop a fund.

(2) The moneys in the fund may be used only to guarantee the repayment of loans to finance the construction of housing subject to an affordable housing covenant for low or moderate income households, as described in ORS 456.270 to 456.295 and as further defined by the Housing and Community Services Department by rule.

(3) The term of a loan guaranteed under this section may not exceed five years.

(4) The department and the state are not guarantors of any loan guaranteed by a nonprofit corporation under this section.

(5) To be eligible for a grant under this section, a nonprofit corporation must:

(a) Be exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code; and

(b) Demonstrate to the satisfaction of the department that the corporation is a community development financial institution that operates statewide to support investment in the construction of affordable housing.

SECTION 46. Section 45 of this 2023 Act is repealed on January 2, 2026.

SECTION 47. In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$20,000,000 to provide grants under section 45 of this 2023 Act.

HOUSING AND COMMUNITY SERVICES DEPARTMENT ADMINISTRATION

SECTION 47a. Notwithstanding any other provision of law, the General Fund appropriation made to the Housing and Community Services Department by section 1, chapter ___, Oregon Laws 2023 (Enrolled Senate Bill 5511), for the biennium beginning July 1, 2023, is increased by \$529,802, for purposes of administering sections 34, 37, 40, 43 and 45 of this 2023 Act.

EMERGENCY HOUSING ASSISTANCE FOR COMPANION ANIMALS

SECTION 48. ORS 458.650 is amended to read:

458.650. (1) The Housing and Community Services Department shall administer the Emergency Housing Account to assist homeless individuals and individuals who are at risk of becoming homeless, through means including the emergency housing assistance program and the state homeless assistance program. Notwithstanding subsection (3)(a) of this section, the state homeless assistance program shall serve individuals experiencing homelessness, especially unsheltered homelessness, without respect to income.

(2) The Oregon Housing Stability Council shall develop a policy for the use of program funds with the advice of:

- (a) Persons who have experienced housing instability;
- (b) Tribes;
- (c) The Community Action Partnership of Oregon;
- (d) Continuums of care, as defined in 24 C.F.R. part 578;
- (e) Local governments;
- (f) Nonprofit organizations;
- (g) Homeless services providers;
- (h) Culturally specific organizations;
- (i) Housing providers;
- (j) Veterans' services organizations; and
- (k) Other entities identified by the department by rule.

(3) The policy under subsection (2) of this section shall direct that program funds shall be used:

(a) To provide to low and very low income individuals, including but not limited to individuals more than 65 years of age, persons with disabilities, agricultural workers and Native Americans:

(A) Emergency shelters and attendant services;

(B) Transitional housing services designed to assist individuals to make the transition from homelessness to permanent housing and economic independence;

(C) Supportive housing services to enable individuals to continue living in their own homes or to provide in-home services for such individuals for whom suitable programs do not exist in their geographic area;

(D) Programs that provide emergency payment of home payments, rents or utilities; [or]

(E) Support for individuals with companion animals, as defined in ORS 401.977, that includes:

- (i) Food for both companion animals and their owners;**

- (ii) Crates or kennels on-site or off-site that are easily accessible to the companion animal owners;
 - (iii) Basic veterinary services, including behavioral services; and
 - (iv) Rules of conduct and responsibility regarding companion animals and their owners;
- or

[(E)] (F) Some or all of the needs described in subparagraphs (A) to [(D)] (E) of this paragraph.

(b) To align with federal strategies and resources that are available to prevent and end homelessness, including the requirement of providing culturally responsive services and using evidence-based and emerging practices effective in ending homelessness, including practices unique to rural communities.

(4)(a) The council shall require as a condition of awarding a grant that the organization demonstrate to the satisfaction of the council that the organization:

(A) Has the capacity to deliver any service proposed by the organization;

(B) Is a culturally responsive organization or is engaged in a process to become a culturally responsive organization;

(C) Engages with culturally specific organizations; and

(D) Supports local homelessness system planning efforts.

(b) Any funds granted under this section may not be used to replace existing funds. Funds granted under this section may be used to supplement existing funds. An organization may use funds to support existing programs or to establish new programs.

(5) The department may expend funds from the account for:

(a) The administration of the account as provided for in the legislatively approved budget, as that term is defined in ORS 291.002, for the department in support of directing a statewide policy on homelessness that ensures use of evidence-based and emerging practices, service equity in funding and local planning processes.

(b) The development of technical assistance and training resources for organizations developing and operating emergency shelters as defined in ORS 197.782 and transitional housing accommodations as described in ORS 197.746.

(6) The department shall utilize outcome-oriented contracting processes and evidence-based and emerging practices for account program funds, including evidence-based and emerging practices for serving rural communities.

(7) Twenty-five percent of moneys deposited in the account pursuant to ORS 294.187 are dedicated to the emergency housing assistance program for assistance to veterans who are homeless or at risk of becoming homeless.

UNIT CAPTIONS

SECTION 49. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

OPERATIVE AND EFFECTIVE DATES

SECTION 50. Sections 2, 17, 29 and 30 of this 2023 Act and the amendments to ORS 92.090, 94.550, 100.015, 100.022, 100.105, 100.110, 100.115, 197.303, 197.830, 215.427 and 227.178 and section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), by sections 3 to 5, 9 to 15, 18 and 19 of this 2023 Act become operative on January 1, 2024.

SECTION 50a. If House Bill 2889 becomes law, section 50 of this 2023 Act is amended to read:

Sec. 50. Sections 2, 17, 29 and 30 of this 2023 Act and the amendments to ORS 92.090, 94.550, 100.015, 100.022, 100.105, 100.110, 100.115, 197.303, 197.830, 215.427 and 227.178 and section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), by sections 3 to 5, 9 to 15, [18] 18a and 19 of this 2023 Act become operative on January 1, 2024.

SECTION 51. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House June 14, 2023

Received by Governor:

Repassed by House June 25, 2023

.....M,....., 2023

Approved:

.....
Timothy G. Sekerak, Chief Clerk of House

.....M,....., 2023

.....
Dan Rayfield, Speaker of House

.....
Tina Kotek, Governor

Passed by Senate June 24, 2023

Filed in Office of Secretary of State:

.....M,....., 2023

.....
Rob Wagner, President of Senate

.....
Secretary of State

80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

Enrolled
House Bill 2001

Sponsored by Representative KOTEK; Representatives FAHEY, HERNANDEZ, MARSH,
MITCHELL, POWER, STARK, WILLIAMS, ZIKA (Presession filed.)

CHAPTER

AN ACT

Relating to housing; creating new provisions; amending ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) As used in this section:

(a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) "Middle housing" means:

(A) Duplexes;

(B) Triplexes;

(C) Quadplexes;

(D) Cottage clusters; and

(E) Townhouses.

(c) "Townhouses" means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.

(2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(3) Except as provided in subsection (4) of this section, each city not within a metropolitan service district with a population of more than 10,000 and less than 25,000 shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. Nothing in this subsection prohibits a local government from allowing middle housing types in addition to duplexes.

(4) This section does not apply to:

(a) Cities with a population of 1,000 or fewer;

(b) Lands not within an urban growth boundary;

(c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;

(d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or

(e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

(5) Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

(6) This section does not prohibit local governments from permitting:

(a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

(b) Middle housing in areas not required under this section.

SECTION 3. (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations or amend its comprehensive plan to implement section 2 of this 2019 Act no later than:

(a) June 30, 2021, for each city subject to section 2 (3) of this 2019 Act; or

(b) June 30, 2022, for each local government subject to section 2 (2) of this 2019 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.

(3) A local government that has not acted within the time provided under subsection (1) of this section shall directly apply the model ordinance developed by the commission under subsection (2) of this section under ORS 197.646 (3) until the local government acts as described in subsection (1) of this section.

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and policies that include but are not limited to:

(a) Waiving or deferring system development charges;

(b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

(c) Assessing a construction tax under ORS 320.192 and 320.195.

(5) When a local government makes a legislative decision to amend its comprehensive plan or land use regulations to allow middle housing in areas zoned for residential use that allow for detached single-family dwellings, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

SECTION 4. (1) Notwithstanding section 3 (1) or (3) of this 2019 Act, the Department of Land Conservation and Development may grant to a local government that is subject to section 2 of this 2019 Act an extension of the time allowed to adopt land use regulations or amend its comprehensive plan under section 3 of this 2019 Act.

(2) An extension under this section may be applied only to specific areas where the local government has identified water, sewer, storm drainage or transportation services that are either significantly deficient or are expected to be significantly deficient before December 31, 2023, and for which the local government has established a plan of actions that will remedy the deficiency in those services that is approved by the department. The extension may not extend beyond the date that the local government intends to correct the deficiency under the plan.

(3) In areas where the extension under this section does not apply, the local government shall apply its own land use regulations consistent with section 3 (1) of this 2019 Act or the model ordinance developed under section 3 (2) of this 2019 Act.

(4) A request for an extension by a local government must be filed with the department no later than:

- (a) **December 31, 2020, for a city subject to section 2 (3) of this 2019 Act.**
- (b) **June 30, 2021, for a local government subject to section 2 (2) of this 2019 Act.**
- (5) **The department shall grant or deny a request for an extension under this section:**
 - (a) **Within 90 days of receipt of a complete request from a city subject to section 2 (3) of this 2019 Act.**
 - (b) **Within 120 days of receipt of a complete request from a local government subject to section 2 (2) of this 2019 Act.**
- (6) **The department shall adopt rules regarding the form and substance of a local government's application for an extension under this section. The department may include rules regarding:**
 - (a) **Defining the affected areas;**
 - (b) **Calculating deficiencies of water, sewer, storm drainage or transportation services;**
 - (c) **Service deficiency levels required to qualify for the extension;**
 - (d) **The components and timing of a remediation plan necessary to qualify for an extension;**
 - (e) **Standards for evaluating applications; and**
 - (f) **Establishing deadlines and components for the approval of a plan of action.**

SECTION 5. ORS 197.296 is amended to read:

197.296. (1)(a) The provisions of subsections (2) to (9) of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional framework plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of **existing and projected** housing need by type and density range, in accordance with **all factors under** ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity *[and need]* pursuant to subsection [(3)] **(3)(a)** of this section must be based on data relating to land within the urban growth boundary that has been collected since the last *[periodic]* review or *[five]* **six** years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) **Market factors that may substantially impact future urban residential development;**
and

[(C) Demographic and population trends;]

[(D) Economic trends and cycles; and]

[(E)] **(D)** The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity *[and need]*. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period *[for economic cycles and trends]* longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or *[more]* **both** of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary[;].

(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall *[monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or]* **adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable vali-**

dition must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.

[(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.]

(c) As used in this subsection, “authorized density level” has the meaning given that term in ORS 227.175.

(7) Using the **housing need** analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

(b) *[The]* A local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved **following the adoption of these actions**. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.

(9) In establishing that actions and measures adopted under subsections (6) and (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section, *[and]* is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section **and is in areas where sufficient urban services are planned to enable the higher density development to occur over the 20-year period**. Actions or measures, or both, may include but are not limited to:

- (a) Increases in the permitted density on existing residential land;
- (b) Financial incentives for higher density housing;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
- (d) Removal or easing of approval standards or procedures;
- (e) Minimum density ranges;
- (f) Redevelopment and infill strategies;
- (g) Authorization of housing types not previously allowed by the plan or regulations;
- (h) Adoption of an average residential density standard; and
- (i) Rezoning or redesignation of nonresidential land.

(10)(a) The provisions of this subsection apply to local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of less than 25,000.

(b) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan that requires the application of a statewide planning goal relating to buildable lands for residential use, a city shall, according to rules of the commission:

- (A) Determine the estimated housing needs within the jurisdiction for the next 20 years;
- (B) Inventory the supply of buildable lands available within the urban growth boundary to accommodate the estimated housing needs determined under this subsection; and
- (C) Adopt measures necessary to accommodate the estimated housing needs determined under this subsection.

(c) For the purpose of the inventory described in this subsection, “buildable lands” includes those lands described in subsection (4)(a) of this section.

SECTION 6. ORS 197.303 is amended to read:

197.303. (1) As used in ORS [197.307] **197.295 to 197.314**, “needed housing” means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes the following housing types:

- (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and
- (e) Housing for farmworkers.

(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), a local government shall use the population projections prescribed by ORS 195.033 or 195.036 and shall consider and adopt findings related to changes in each of the following factors since the last periodic or legislative review or six years, whichever is greater, and the projected future changes in these factors over a 20-year planning period:

- (a) Household sizes;**
- (b) Household demographics in terms of age, gender, race or other established demographic category;**
- (c) Household incomes;**
- (d) Vacancy rates; and**
- (e) Housing costs.**

(3) A local government shall make the estimate described in subsection (2) of this section using a shorter time period than since the last periodic or legislative review or six years, whichever is greater, if the local government finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.

(4) A local government shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. The local government must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.

[2] **(5)** Subsection (1)(a) and (d) of this section does not apply to:

- (a) A city with a population of less than 2,500.
- (b) A county with a population of less than 15,000.

[3] **(6)** A local government may take an exception under ORS 197.732 to the definition of “needed housing” in subsection (1) of this section in the same manner that an exception may be taken under the goals.

SECTION 7. ORS 197.312, as amended by section 7, chapter 15, Oregon Laws 2018, is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection[.]:

(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(B) "Reasonable local regulations relating to siting and design" does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.

(6) Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.

SECTION 8. Section 1, chapter 47, Oregon Laws 2018, is amended to read:

Sec. 1. (1) For purposes of this section:

(a) A household is severely rent burdened if the household spends more than 50 percent of the income of the household on gross rent for housing.

(b) A regulated affordable unit is a residential unit subject to a regulatory agreement that runs with the land and that requires affordability for an established income level for a defined period of time.

[(c) A single-family unit may be rented or owned by a household and includes single-family homes, duplexes, townhomes, row homes and mobile homes.]

(2)(a) The Housing and Community Services Department shall annually provide to the governing body of each city in this state with a population greater than 10,000 the most current data available from the United States Census Bureau, or any other source the department considers at least as reliable, showing the percentage of renter households in the city that are severely rent burdened.

(b) The Housing and Community Services Department, in collaboration with the Department of Land Conservation and Development, shall develop a survey form on which the governing body of

a city may provide specific information related to the affordability of housing within the city, including, but not limited to:

(A) The actions relating to land use and other related matters that the governing body has taken to increase the affordability of housing and reduce rent burdens for severely rent burdened households; and

(B) The additional actions the governing body intends to take to reduce rent burdens for severely rent burdened households.

(c) If the Housing and Community Services Department determines that at least 25 percent of the renter households in a city are severely rent burdened, the department shall provide the governing body of the city with the survey form developed pursuant to paragraph (b) of this subsection.

(d) The governing body of the city shall return the completed survey form to the Housing and Community Services Department and the Department of Land Conservation and Development within 60 days of receipt.

(3)(a) In any year in which the governing body of a city is informed under this section that at least 25 percent of the renter households in the city are severely rent burdened, the governing body shall hold at least one public meeting to discuss the causes and consequences of severe rent burdens within the city, the barriers to reducing rent burdens and possible solutions.

(b) The Housing and Community Services Department may adopt rules governing the conduct of the public meeting required under this subsection.

(4) No later than February 1 of each year, the governing body of each city in this state with a population greater than 10,000 shall submit to the Department of Land Conservation and Development a report for the immediately preceding calendar year setting forth separately for each of the following categories the total number of units that were permitted and the total number that were produced:

- (a) Residential units.
- (b) Regulated affordable residential units.
- (c) Multifamily residential units.
- (d) Regulated affordable multifamily residential units.
- (e) Single-family *[units]* **homes**.
- (f) Regulated affordable single-family *[units]* **homes**.
- (g) Accessory dwelling units.**
- (h) Regulated affordable accessory dwelling units.**
- (i) Units of middle housing, as defined in section 2 of this 2019 Act.**
- (j) Regulated affordable units of middle housing.**

SECTION 9. ORS 455.610 is amended to read:

455.610. (1) The Director of the Department of Consumer and Business Services shall adopt, and amend as necessary, a Low-Rise Residential Dwelling Code that contains all requirements, including structural design provisions, related to the construction of residential dwellings three stories or less above grade. The code provisions for plumbing and electrical requirements must be compatible with other specialty codes adopted by the director. The Electrical and Elevator Board, the Mechanical Board and the State Plumbing Board shall review, respectively, amendments to the electrical, mechanical or plumbing provisions of the code.

(2) Changes or amendments to the code adopted under subsection (1) of this section may be made when:

- (a) Required by geographic or climatic conditions unique to Oregon;
- (b) Necessary to be compatible with other statutory provisions;
- (c) Changes to the national codes are adopted in Oregon; or
- (d) Necessary to authorize the use of building materials and techniques that are consistent with nationally recognized standards and building practices.

(3) Notwithstanding ORS 455.030, 455.035, 455.110 and 455.112, the director may, at any time following appropriate consultation with the Mechanical Board or Building Codes Structures Board,

amend the mechanical specialty code or structural specialty code to ensure compatibility with the Low-Rise Residential Dwelling Code.

(4) The water conservation provisions for toilets, urinals, shower heads and interior faucets adopted in the Low-Rise Residential Dwelling Code shall be the same as those adopted under ORS 447.020 to meet the requirements of ORS 447.145.

(5) The Low-Rise Residential Dwelling Code shall be adopted and amended as provided by ORS 455.030 and 455.110.

(6) The director, by rule, shall establish uniform standards for a municipality to allow an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code in areas where the local jurisdiction determines that the fire apparatus means of approach to a property or water supply serving a property does not meet applicable fire code or state building code requirements. The alternate method of construction, which may include but is not limited to the installation of automatic fire sprinkler systems, must be approved in conjunction with the approval of an application under ORS 197.522.

(7) For lots of record existing before July 2, 2001, or property that receives any approval for partition, subdivision or construction under ORS 197.522 before July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code may apply the uniform standards established by the director pursuant to subsection (6) of this section. For property that receives all approvals for partition, subdivision or construction under ORS 197.522 on or after July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code must apply the uniform standards established by the director pursuant to subsection (6) of this section.

(8) The director, by rule, shall establish uniform standards for a municipality to allow alternate approval of construction related to conversions of single-family dwellings into no more than four residential dwelling units built to the Low-Rise Residential Dwelling Code that received occupancy approval prior to January 1, 2020. The standards established under this subsection must include standards describing the information that must be submitted before an application for alternate approval will be deemed complete.

(9)(a) A building official described in ORS 455.148 or 455.150 must approve or deny an application for alternate approval under subsection (8) of this section no later than 15 business days after receiving a complete application.

(b) A building official who denies an application for alternate approval under this subsection shall provide to the applicant:

(A) A written explanation of the basis for the denial; and

(B) A statement that describes the applicant's appeal rights under subsection (10) of this section.

(10)(a) An appeal from a denial under subsection (9) of this section must be made through a municipal administrative process. A municipality shall provide an administrative process that:

(A) Is other than a judicial proceeding in a court of law; and

(B) Affords the party an opportunity to appeal the denial before an individual, department or body that is other than a plan reviewer, inspector or building official for the municipality.

(b) A decision in an administrative process under this subsection must be completed no later than 30 business days after the building official receives notice of the appeal.

(c) Notwithstanding ORS 455.690, a municipal administrative process required under this subsection is the exclusive means for appealing a denial under subsection (9) of this section.

(11) The costs incurred by a municipality under subsections (9) and (10) of this section are building inspection program administration and enforcement costs for the purpose of fee adoption under ORS 455.210.

SECTION 10. (1) It is the policy of the State of Oregon to reduce to the extent practicable administrative and permitting costs and barriers to the construction of middle housing, as defined in section 2 of this 2019 Act, while maintaining safety, public health and the general welfare with respect to construction and occupancy.

(2) The Department of Consumer and Business Services shall submit a report describing rules and standards relating to low-rise residential dwellings proposed under ORS 455.610, as amended by section 9 of this 2019 Act, in the manner provided in ORS 192.245, to an interim committee of the Legislative Assembly related to housing no later than January 1, 2020.

SECTION 11. Section 12 of this 2019 Act is added to and made a part of ORS 94.550 to 94.783.

SECTION 12. A provision in a governing document that is adopted or amended on or after the effective date of this 2019 Act, is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of housing that is otherwise allowable under the maximum density of the zoning for the land.

SECTION 13. A provision in a recorded instrument affecting real property is not enforceable if:

(1) The provision would allow the development of a single-family dwelling on the real property but would prohibit the development of:

(a) Middle housing, as defined in section 2 of this 2019 Act; or

(b) An accessory dwelling unit allowed under ORS 197.312 (5); and

(2) The instrument was executed on or after the effective date of this 2019 Act.

SECTION 14. (1) Sections 2, 12 and 13 of this 2019 Act and the amendments to ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018, by sections 5 to 9 of this 2019 Act become operative on January 1, 2020.

(2) The Land Conservation and Development Commission, the Department of Consumer and Business Services and the Residential and Manufactured Structures Board may take any actions before the operative date specified in subsection (1) of this section necessary to enable the commission, department or board to exercise, on or after the operative date specified in subsection (1) of this section, the duties required under sections 2, 3 and 10 of this 2019 Act and the amendments to ORS 455.610 by section 9 of this 2019 Act.

SECTION 15. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$3,500,000 for the purpose of providing technical assistance to local governments in implementing section 3 (1) of this 2019 Act and to develop plans to improve water, sewer, storm drainage and transportation services as described in section 4 (2) of this 2019 Act. The department shall prioritize technical assistance to cities or counties with limited planning staff or that commit to implementation earlier than the date required under section 3 (1) of this 2019 Act.

SECTION 16. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House June 20, 2019

.....
Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 30, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

.....
Bev Clarno, Secretary of State

Division 46 Middle Housing in Medium and Large Cities

Rules as adopted by the Land Conservation and Development Commission December 9, 2020

660-046-0000 Purpose

The purpose of this division is to prescribe standards guiding the development of Middle Housing types as provided in Oregon Laws 2019, chapter 639. OAR 660-046-0010 to OAR 660-046-0235 establish standards related to the siting and design of Middle Housing types in urban growth boundaries. OAR 660-046-0300 to OAR 660-046-0370 establish the form and substance of an application and the review process to delay the enactment of standards related to the siting and design of Middle Housing types in areas with significant infrastructure deficiencies.

660-046-0010 Applicability

1. A local government that is a Medium City or Large City must comply with this division.
2. Notwithstanding section (1), a Medium or Large City need not comply with this division for:
 - a. Lots or Parcels that are not zoned for residential use, including but not limited to Lots or Parcels zoned primarily for commercial, industrial, agricultural, or public uses;
 - b. Lots or Parcels that are Zoned For Residential Use but do not allow for the development of a detached single-family dwelling; and
 - c. Lots or Parcels that are not incorporated and that are zoned under an interim zoning designation that maintains the land's potential for planned urban development.
3. A Medium or Large City may regulate Middle Housing to comply with protective measures (including plans, policies, and regulations) adopted and acknowledged pursuant to statewide land use planning goals. Where Medium and Large Cities have adopted, or shall adopt, regulations implementing the following statewide planning goals, the following provisions provide direction as to how those regulations shall be implemented in relation to Middle Housing, as required by this rule.
 - a. Goal 5: Natural Resources, Scenic, and Historic Areas – OAR chapter 660, division 23, prescribes procedures, and in some cases, standards, for complying with Goal 5. OAR chapter 660, division 16 directed implementation of Goal 5 prior to division 23. Local protection measures adopted pursuant to divisions 23 and 16 are applicable to Middle Housing.
 - A. Goal 5 Natural Resources – Pursuant to OAR 660-023-0050 through OAR 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.
 - B. Goal 5: Historic Resources – Pursuant to OAR 660-023-0200(7), Medium and Large Cities must adopt land use regulations to protect locally significant historic resources. This includes regulations applicable to Middle Housing to comply with protective measures as it relates to the integrity of a historic resource or district. Protective measures shall be adopted and applied as provided in OAR 660-023-0200. Medium and Large Cities may apply regulations adopted under OAR 660-023-0200 to Middle Housing that apply to detached single-family dwellings in the same zone, except as provided below. If a Medium or Large City has not adopted land use regulations to protect significant historic resources listed on the National Register of Historic Places, it must apply protective

measures to Middle Housing as provided in OAR 660-023-0200(8)(a) until the Medium or Large City adopts land use regulations in compliance with OAR 660-023-0200. Medium or Large Cities may not apply the following types of regulations specific to Middle Housing:

- i. Use, density, and occupancy restrictions that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings; and
 - ii. Standards that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings.
- 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.
- c. Goal 7: Areas Subject to Natural Hazards – Pursuant to OAR 660-015-0000(7), Medium and Large Cities must adopt comprehensive plans (inventories, policies, and implementing measures) to reduce risk to people and property from natural hazards. Such protective measures adopted pursuant to Goal 7 apply to Middle Housing, including, but not limited to, restrictions on use, density, and occupancy in the following areas:
 - A. Special Flood Hazard Areas as identified on the applicable Federal Emergency Management Agency Flood Insurance Rate Map; and
 - B. Other hazard areas identified in an adopted comprehensive plan or development code, provided the Medium or Large City determines that the development of Middle Housing presents a greater risk to life or property than the development of detached single-family dwellings from the identified hazard. Greater risk includes but is not limited to actions or effects such as:
 - i. Increasing the number of people exposed to a hazard;
 - ii. Increasing risk of damage to property, built, or natural infrastructure; and
 - iii. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.
- 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 and Large Cities may limit the development of Middle Housing on Lots or Parcels Zoned For Residential Use designated for future industrial or employment uses.
- e. Goal 11: Public Facilities and Services - Pursuant to OAR 660-011-0020(2), a public facility plan must identify significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. This includes public facility projects to support the development of Middle Housing in areas zoned for residential use that allow for the development of detached single-family dwellings. Following adoption of Middle Housing allowances by a Large City, the Large City shall work to ensure that infrastructure serving undeveloped or underdeveloped areas, as defined in OAR 660-046-0320(8), where Middle Housing is allowed is appropriately designed and sized to serve Middle Housing.
- f. 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.
- g. Goal 16: Estuarine Resources – Pursuant to OAR 660-015-0010(1) and OAR chapter 660, division 17, Medium and Large Cities must apply land use regulations that protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features, and water quality. Medium and Large Cities may prohibit Middle Housing in areas regulated to

- protect estuarine resources under Goal 16 in the same manner as the Medium or Large City prohibits detached single-family dwellings to protect estuarine resources under Goal 16.
- h. Goal 17: Coastal Shorelands – Pursuant to OAR 660-015-0010(2) and OAR 660-037-0080, local governments must apply land use regulations that protect shorelands for water-dependent recreational, commercial, and industrial uses. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 17. Local governments may apply regulations to Middle Housing that apply to detached single-family dwellings in the same zone.
 - i. Goal 18: Beaches and Dunes – Pursuant to OAR 660-015-0010(3), Medium and Large Cities must apply land use regulations to residential developments to mitigate hazards to life, public and private property, and the natural environment in areas identified as Beaches and Dunes under Goal 18. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 18 including but not limited to restrictions on use, density, and occupancy; provided the development of Middle Housing presents a greater risk to life or property than development of detached single-family dwellings. Greater risk includes but is not limited to actions or effects such as:
 - A. Increasing the number of people exposed to a hazard;
 - B. Increasing risk of damage to property, built or natural infrastructure; and
 - C. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.
4. For the purposes of assisting local jurisdictions in adopting reasonable siting and design standards for Middle Housing, the applicable Model Code adopted in this section will be applied to A Local Government That Has Not Acted to comply with the provisions of ORS 197.758 and this division. For such Medium and Large Cities, the applicable Model Code completely replaces and pre-empts any provisions of those Medium and Large Cities’ development codes that conflict with the Model Code. The Commission adopts the following Middle Housing Model Codes:
 - a. The Medium City Model Code as provided in Exhibit A; and
 - b. The Large City Model Code as provided in Exhibit B.
 5. This division does not prohibit Medium or Large Cities from allowing:
 - a. Single-family dwellings in areas zoned to allow for single-family dwellings; or
 - b. Middle Housing in areas not required under this division.

660-046-0020 Definitions

As used in this division, the definitions in ORS 197.015 and ORS 197.758 apply, unless the context requires otherwise. In addition, the following definitions apply:

1. “A Local Government That Has Not Acted” means a Medium or Large City that has not adopted acknowledged land use regulations that are in compliance with ORS 197.758 and this division.
2. “Cottage Cluster” means a grouping of no fewer than four detached dwelling units per acre with a footprint of less than 900 square feet each that includes a common courtyard. A Medium or Large City may allow Cottage Cluster units to be located on a single Lot or Parcel, or on individual Lots or Parcels.
3. “Department” means the Department of Land Conservation and Development.
4. “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.
5. “Detached single-family dwelling” means a detached structure on a Lot or Parcel that is comprised of a single dwelling unit.
6. “Duplex” means two attached dwelling units on a Lot or Parcel. A Medium or Large City may define a Duplex to include two detached dwelling units on a Lot or Parcel.
7. “Goal Protected Lands” means lands protected or designated pursuant to any one of the following statewide planning goals:
 - a. Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces;

- b. Goal 6 Air, Water and Land Resource Quality;
 - c. Goal 7 Areas Subject to Natural Hazards;
 - d. Goal 9 Economic Development;
 - e. Goal 15 Willamette River Greenway;
 - f. Goal 16 Estuarine Resources;
 - g. Goal 17 Coastal Shorelands; and
 - h. Goal 18 Beaches and Dunes.
8. "Large City" means a city with a certified Portland State University Population Research Center estimated population of 25,000 or more or a city with a population over 1,000 within a metropolitan service district. A Large City includes unincorporated areas of counties within a metropolitan service district that are provided with sufficient urban services as defined in ORS 195.065. Sufficient urban services means areas that are within an urban service district boundary.
9. "Lot or Parcel" means any legally created unit of land.
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.
11. "Medium City" means a city with a certified Portland State University Population Research Center estimated population more than 10,000 and less than 25,000 and not within a metropolitan service district.
12. "Middle Housing" means Duplexes, Triplexes, Quadplexes, Cottage Clusters, and Townhouses.
13. "Model Code" means the applicable Model Code developed by the Department and contained in the exhibits in OAR 660-046-0010(4).
14. "Quadplex" means four attached dwelling units on a Lot or Parcel. A Large City may define a Quadplex to include any configuration of four detached or attached dwelling units on one Lot or Parcel.
15. "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.
16. "Sufficient Infrastructure" means the following level of public services to serve new Triplexes, Quadplexes, Townhouses, or Cottage Cluster development:
- a. Connection to a public sewer system capable of meeting established service levels;
 - b. Connection to a public water system capable of meeting established service levels;
 - c. Access via public or private streets meeting adopted emergency vehicle access standards to a city's public street system; and
 - d. Storm drainage facilities capable of meeting established service levels for storm drainage.
17. "Townhouse" means a dwelling unit that is part of a row of two or more attached dwelling units, where each unit is located on an individual Lot or Parcel and shares at least one common wall with an adjacent dwelling unit.
18. "Townhouse Project" means one or more townhouse structures constructed, or proposed to be constructed, together with the development site where the land has been divided, or is proposed to be divided, to reflect the Townhouse property lines and the any commonly owned property.
19. "Triplex" means three attached dwelling units on a Lot or Parcel. A Large City may define a Triplex to include any configuration of three detached or attached dwelling units on one Lot or Parcel.

20. "Zoned for Residential Use" means a zoning district in which residential dwellings are the primary use and which implements a residential comprehensive plan map designation.

660-046-0030 Implementation of Middle Housing Ordinances

1. Before a Medium or Large City amends an acknowledged comprehensive plan or a land use regulation to allow Middle Housing, the Medium or Large City must submit the proposed change to the Department for review and comment pursuant to OAR chapter 660, division 18.
2. In adopting or amending regulations or amending a comprehensive plan to allow Middle Housing, a Medium or Large City must include findings demonstrating consideration, as part of the post-acknowledgement plan amendment process, of methods to increase the affordability of Middle Housing through ordinances or policies that include but are not limited to:
 - a. Waiving or deferring system development charges;
 - b. Adopting or amending criteria for property tax exemptions under ORS 307.515 to ORS 307.523, ORS 307.540 to ORS 307.548 or ORS 307.651 to ORS 307.687 or property tax freezes under ORS 308.450 to ORS 308.481; and
 - c. Assessing a construction tax under ORS 320.192 and ORS 320.195.
3. When a Medium or Large City amends its comprehensive plan or land use regulations to allow Middle Housing, the Medium or Large City is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

660-046-0040 Compliance

1. A Medium or Large City may adopt land use regulations or amend its comprehensive plan to comply with ORS 197.758 and the provisions of this division.
2. A Medium or Large City may request from the Department an extension of the time allowed to complete the action under section (1) pursuant to the applicable sections of OAR 660-046-0300 through OAR 660-046-0370.
3. A Medium City which is A Local Government That Has Not Acted by June 30, 2021 or within one year of qualifying as a Medium City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0010(4) in its entirety to all proposed Middle Housing development applications until such time as the Medium City has adopted provisions under section (1).
4. A Large City which is A Local Government That Has Not Acted by June 30, 2022 or within two years of qualifying as a Large City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0010(4) for the specific Middle Housing type that is not in compliance with the relevant rules in this division to all proposed development applications for that specific Middle Housing type until such time as the Large City has adopted provisions under section (1).
5. If a Medium or Large City has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the Medium or Large City's land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an appellate court solely on procedural grounds, the Medium or Large City is deemed to have acted. Accordingly, the Medium or Large City may continue to apply its own land use regulations and comprehensive plan as they existed prior to the adoption of land use regulations or comprehensive plan amendments that were the subject of procedural remand until the first of the two options:
 - a. The Medium or Large City has adopted land use regulations or amended its comprehensive plan in response to the remand; or
 - b. 120 days after the date of the remand. If the Medium or Large City has not adopted land use regulations or amended its comprehensive plan within 120 days of the date of the remand, the Medium or Large City is deemed not to have acted under sections (3) and (4).
6. If a Medium or Large City has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the Medium or Large city's land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an

appellate court on any substantive grounds, the Medium or Large City is deemed to have not acted under sections (3) and (4).

7. If a Medium or Large City acknowledged to be in compliance with this division subsequently amends its land use regulations or comprehensive plan, and those amendments are remanded by the Land Use Board of Appeals or an appellate court, the Medium or Large City shall continue to apply its land use regulations and comprehensive plan as they existed prior to the amendments until the amendments are acknowledged.
8. Where a Medium or Large City directly applies the Model Code in accordance with sections (3), (4) and (5), the Model Code completely replaces and pre-empts any provisions of that Medium or Large City's development code that conflict with the applicable sections of the Model Code.

660-046-0050 Eligible Local Governments

1. If a local government was not previously a Medium City and a certified Portland State University Population Research Center population estimate qualifies it as a Medium City, the local government must comply with this division within one year of its qualification as a Medium City.
2. If a local government was not previously a Large City and a certified Portland State University Population Research Center population estimate qualifies it as a Large City, the local government must comply with this division within two years of its qualification as a Large City.

660-046-0100 Purpose of Middle Housing in Medium Cities

OAR 660-046-0105 through OAR 660-046-0130 are intended to measure compliance with ORS 197.758 et seq. and Goal 10 Housing for Medium Cities.

660-046-0105 Applicability of Middle Housing in Medium Cities

1. A Medium City must allow for the development of a Duplex, including those Duplexes created through conversion of an existing detached single-family dwelling, on each Lot or Parcel zoned for residential use that allows for the development of detached single-family dwellings.
2. OAR 660-046-0105 through OAR 660-046-0130 do not require a Medium City to allow more than two dwellings units on a Lot or Parcel, including any accessory dwelling units.

660-046-0110 Provisions Applicable to Duplexes in Medium Cities

1. Medium Cities may regulate Duplexes to comply with protective measures, including plans, policies and regulations, as provided in OAR 660-046-0010(3).
2. Medium Cities may regulate siting and design of Duplexes, provided that the regulations:
 - a. Are clear and objective standards, conditions, or procedures consistent with ORS 197.307; and
 - b. Do not, individually or cumulatively, discourage the development of Duplexes through unreasonable costs or delay.
3. Siting and design standards that create unreasonable cost and delay include any standards applied to Duplex development that are more restrictive than those applicable to detached single-family dwellings in the same zone.
4. Siting and design standards that do not, individually or cumulatively, discourage the development of Duplexes through unreasonable cost and delay include only the following:
 - a. Regulations to comply with protective measures adopted pursuant to statewide land use planning goals provided in OAR 660-046-0010(3);
 - b. Permitted uses and approval process provided in OAR 660-046-0115;
 - c. Siting standards provided in OAR 660-046-0120;
 - d. Design standards in Medium Cities provided in OAR 660-046-0125;
 - e. Duplex Conversions provided in OAR 660-046-0130; and
 - f. Any siting and design standards in the Model Code contained in section OAR 660-046-0010(4)(a).

660-046-0115 Permitted Uses and Approval Process

Medium Cities must apply the same approval process to Duplexes as detached single-family dwellings in the same zone. Pursuant to OAR 660-007-0015, OAR 660-008-0015, and ORS 197.307, Medium Cities may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of Duplexes. Nothing in this rule prohibits a Medium City from adopting an alternative approval process for applications and permits for Middle Housing based on approval criteria that are not clear and objective as provided in OAR 660-007-0015(2), OAR 660-008-0015(2), and ORS 197.307(6).

660-046-0120 Duplex Siting Standards in Medium Cities

The following standards apply to all Duplexes:

1. Minimum Lot or Parcel Size: A Medium City may not require a minimum Lot or Parcel size that is greater than the minimum Lot or Parcel size required for a detached single-family dwelling in the same zone. Additionally, Medium Cities shall allow the development of a Duplex on any property zoned to allow detached single-family dwellings, which was legally created prior to the Medium City's current lot size minimum for detached single-family dwellings in the same zone.
2. Density: If a Medium City applies density maximums in a zone, it may not apply those maximums to the development of Duplexes.
3. Setbacks: A Medium City may not require setbacks to be greater than those applicable to detached single-family dwellings in the same zone.
4. Height: A Medium City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone.
5. Parking:
 - a. A Medium City may not require more than a total of two off-street parking spaces for a Duplex.
 - b. Nothing in this section precludes a Medium City from allowing on-street parking credits to satisfy off-street parking requirements.
6. Lot Coverage and Floor Area Ratio: Medium Cities are not required to apply lot coverage or floor area ratio standards to new Duplexes. However, if the Medium City chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for a Duplex that is less than established for detached single-family dwelling in the same zone.
7. A Medium City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must allow the granting of the same exceptions to Duplexes.

660-046-0125 Duplex Design Standards in Medium Cities

1. Medium Cities are not required to apply design standards to new Duplexes. However, if the Medium City chooses to apply design standards to new Duplexes, it may only apply the same clear and objective design standards that the Medium City applies to detached single-family structures in the same zone.
2. A Medium City may not apply design standards to Duplexes created as provided in OAR 660-046-0130.

660-046-0130 Duplex Conversions

Additions to or conversion of an existing detached single-family dwelling to a Duplex is allowed, pursuant to OAR 660-046-0105(2), provided that the conversion does not increase nonconformance with applicable clear and objective standards in the Medium City's development code.

660-046-0200 Purpose of Middle Housing in Large Cities

OAR 660-046-0205 through OAR 660-046-0235 are intended to measure compliance with ORS 197.758 and Goal 10 Housing for Large Cities.

660-046-0205 Applicability of Middle Housing in Large Cities

1. A Large City must allow for the development of Duplexes in the same manner as required for Medium Cities in OAR 660-046-0100 through OAR 660-046-0130.

2. A Large City must allow for the development of Triplexes, Quadplexes, Townhouses, and Cottage Clusters, including those created through additions to or conversions 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. Goal-Protected Lands: Large Cities may regulate Middle Housing on Goal-Protected Lands as provided in OAR 660-046-0010(3);
 - b. 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 must allow the development of all Middle Housing types as provided in OAR 660-046-0205 through OAR 660-046-0235. For Master Planned Communities adopted after January 1, 2021:
 - i. A Large City must plan to provide urban water, sanitary sewer, stormwater, and transportation systems that accommodate at least 20 dwelling units per net acre if located within a metropolitan service district boundary, and 15 dwelling units per net acre if located outside of a metropolitan service district boundary.
 - ii. The Large City may require the applicant demonstrate, through an amended public facility plan or similar mechanism, the sufficient provision of public services needed to serve the proposed development, if a proposed Middle Housing development exceeds the planned public service capacity of a Master Plan.
 - iii. A Large City may require a mix of two or more Middle Housing types within a Master Plan or portions of a Master Plan.
 - iv. 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.
 - 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.
 - c. Impacted by State or Federal Law: A Large City must demonstrate that regulations or limitations of Middle Housing other than Duplexes are necessary to implement or comply with an established state or federal law or regulation on these types of lands.
3. A Large City may:
 - a. 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 as provided in OAR 660-046-0205 through OAR 660-046-0235; or
 - b. Apply separate minimum lot size and maximum density provisions than what is provided in OAR 660-046-0220, provided that the applicable Middle Housing type other than Duplexes is allowed on the following percentage of Lots and Parcels zoned for residential use that allow for the development of detached single-family dwellings, excluding lands described in subsection (2):
 - A. Triplexes – Must be allowed on 80 percent of Lots or Parcels;
 - B. Quadplexes - Must be allowed on 70 percent of Lots or Parcels;
 - C. Townhouses - Must be allowed on 60 percent of Lots or Parcels; and

- D. Cottage Clusters – Must be allowed on 70 percent of Lots or Parcels.
 - E. A Middle Housing type is considered “allowed” on a Lot or Parcel when the following criteria are met:
 - i. The Middle Housing type is a permitted use on that Lot or Parcel under the same administrative process as a detached single-family dwelling in the same zone;
 - ii. The Lot or Parcel has sufficient square footage to allow the Middle Housing type within the applicable minimum lot size requirement;
 - iii. Maximum density requirements do not prohibit the development of the Middle Housing type on the subject Lot or Parcel; and
 - iv. The applicable siting or design standards do not individually or cumulatively cause unreasonable cost or delay to the development of that Middle Housing type as provided in OAR 660-046-0210(3).
 - F. A Large City must ensure the equitable distribution of Middle Housing by allowing, as defined in paragraph (3)(b)(E) above, at least one Middle Housing type other than Duplexes and Cottage Clusters on 75 percent or more of all Lots or Parcels zoned for residential use that allow for the development of detached single-family dwellings within each census block group, with at least four eligible Lots and Parcels as described in section (2), within a Large City.
 - G. Large Cities must demonstrate continuing compliance with subsection (3)(b) at the following intervals:
 - i. At the initial submittal of a Middle Housing comprehensive plan or land use regulation change, in accordance with OAR chapter 660, division 18;
 - ii. At any future Housing Capacity Analysis deadline as provided in OAR 660-008-0045, except that a demonstration of continuing compliance will not be required earlier than six years after initial adoption of acknowledged land use regulations in compliance with this division; and
 - iii. With any future comprehensive plan or land use regulation changes that implements this division, in accordance with OAR chapter 660, division 18, for Large Cities that are not subject to the Housing Capacity Analysis deadline as provided in OAR 660-008-0045, except that a demonstration of continuing compliance will not be required more frequently than once every six years after initial adoption of acknowledged land use regulations in compliance with this division.
4. Pursuant to OAR 660-046-0205 through OAR 660-046-0235, the following numerical standards related to Middle Housing types apply:
- a. Duplexes – Large Cities may allow more than two dwellings units on a Lot or Parcel, including any accessory dwelling units.
 - b. Triplexes and Quadplexes – Large Cities may allow more than four dwelling units on a Lot or Parcel, including any accessory dwelling units.
 - c. Townhouses – Large Cities must require at least two attached Townhouse dwelling units and must allow up to four attached Townhouse units subject to applicable siting or design standards as provided in OAR 660-046-0220 through OAR 660-046-0235. A Large City may allow five or more attached Townhouse dwelling units.
 - 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 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 per common courtyard.

660-046-0210 Provisions Applicable to Middle Housing in Large Cities

1. Large Cities may regulate Middle Housing to comply with protective measures, including plans, policies and regulations, as provided in OAR 660-046-0010(3).
2. Large Cities may regulate siting and design of Middle Housing, provided that the regulations:
 - a. Are clear and objective standards, conditions, or procedures consistent with the requirements of ORS 197.307; and
 - b. Do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable costs or delay.
3. Siting and design standards that do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable cost and delay include only the following:
 - a. Regulations to comply with protective measures adopted pursuant to statewide land use planning goals provided in OAR 660-046-0010(3);
 - b. Permitted uses and approval processes provided in OAR 660-046-0215;
 - c. Siting standards provided in OAR 660-046-0220;
 - d. Design standards in Large Cities provided in OAR 660-046-0225;
 - e. Middle Housing Conversions provided in OAR 660-046-0230;
 - f. Alternative siting or design standards provided in OAR 660-046-0235; and
 - g. Any siting and design standards in the Model Code contained in OAR 660-046-0010(4)(b).

660-046-0215 Permitted Uses and Approval Process

Large Cities must apply the same approval process to Middle Housing as detached single-family dwellings in the same zone. Pursuant to OAR 660-008-0015 and ORS 197.307, Large Cities may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of Middle Housing consistent with the requirements of ORS 197.307. Nothing in this rule prohibits a Large City from adopting an alternative approval process for applications and permits for Middle Housing based on approval criteria that are not clear and objective as provided in OAR 660-007-0015(2), OAR 660-008-0015(2), and ORS 197.307(6).

660-046-0220 Middle Housing Siting Standards in Large Cities

1. Large Cities must apply siting standards to Duplexes in the same manner as required for Medium Cities in OAR 660-046-0120.
2. The following governs Large Cities' regulation of siting standards related to Triplexes and Quadplexes:
 - a. Minimum Lot or Parcel Size:
 - A. For Triplexes:
 - i. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is 5,000 square feet or less, the minimum Lot or Parcel size for a Triplex may be no greater than 5,000 square feet.
 - ii. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is greater than 5,000 square feet, the minimum Lot or Parcel size for a Triplex may be no greater than the minimum Lot or Parcel size for a detached single-family dwelling.
 - B. For Quadplexes:
 - i. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is 7,000 square feet or less, the minimum Lot or Parcel size for a Quadplex may be no greater than 7,000 square feet.
 - ii. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is greater than 7,000 square feet, the minimum Lot or Parcel size for a Quadplex may be no greater than the minimum Lot or Parcel size for a detached single-family dwelling.
 - C. A Large City may apply a lesser minimum Lot or Parcel size in any zoning district for a Triplex or Quadplex than provided in paragraphs (A) or (B).

- b. Density: If a Large City applies density maximums in a zone, it may not apply those maximums to the development of Quadplex and Triplexes.
 - c. Setbacks: A Large City may not require setbacks greater than those applicable to detached single-family dwellings in the same zone.
 - d. Height: A Large City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone, except a maximum height may not be less than 25 feet or two stories.
 - e. Parking:
 - A. For Triplexes, a Large City may require up to the following off-street parking spaces:
 - i. For Lots or Parcels of less than 3,000 square feet: one space in total;
 - ii. For Lots or Parcels greater than or equal to 3,000 square feet and less than 5,000 square feet: two spaces in total; and
 - iii. For Lots or Parcels greater than or equal to 5,000 square feet: three spaces in total.
 - B. For Quadplexes, a Large City may require up to the following off-street parking spaces:
 - i. For Lots or Parcels of less than 3,000 square feet: one space in total;
 - ii. For Lots or Parcels greater than or equal to 3,000 square feet and less than 5,000 square feet: two spaces in total;
 - iii. For Lots or Parcels greater than or equal to 5,000 square feet and less than 7,000 square feet: three spaces in total; and
 - iv. For Lots or Parcels greater than or equal to 7,000 square feet: four spaces in total.
 - C. A Large City may allow on-street parking credits to satisfy off-street parking requirements.
 - D. A Large City may allow, but may not require, off-street parking to be provided as a garage or carport.
 - E. A Large City must apply the same off-street parking surfacing, dimensional, landscaping, access, and circulation standards that apply to single-family detached dwellings in the same zone.
 - F. A Large City may not apply additional minimum parking requirements to Middle Housing created as provided in OAR 660-046-0230.
 - f. Lot or Parcel Coverage and Floor Area Ratio: Large Cities are not required to apply Lot or Parcel coverage or floor area ratio standards to Triplexes or Quadplexes. However, if the Large City applies Lot or Parcel coverage or floor area ratio standards, it may not establish a cumulative Lot or Parcel coverage or floor area ratio for Triplexes or Quadplexes that is less than established for detached single-family dwelling in the same zone.
 - g. A Large City shall work with an applicant for development to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Triplex or Quadplex development application.
3. The following governs Large Cities' regulation of siting standards related to Townhouses:
- a. Minimum Lot or Parcel Size: A Large City is not required to apply a minimum Lot or Parcel size to Townhouses, but if it applies those standards, the average minimum Lot or Parcel size for Lot or Parcels in a Townhouse Project may not be greater than 1,500 square feet. A Large City may apply separate minimum Lot or Parcel sizes for internal, external, and corner Townhouse Lots or Parcels provided that they average 1,500 square feet, or less.
 - b. Minimum Street Frontage: A Large City is not required to apply a minimum street frontage standard to Townhouses, but if it applies those standards, the minimum street frontage standard must not exceed 20 feet. A Large City may allow frontage on public and private streets or alleys; and on shared or common drives. If a Large City allows flag Lots or Parcels, it is not required to allow Townhouses on those Lots or Parcels.
 - c. Density: If a Large City applies density maximums in a zone, it must allow four times the maximum density allowed for detached single-family dwellings in the same zone for the development of Townhouses or 25 dwelling units per acre, whichever is less.

- d. Setbacks: A Large City may not require front, side, or rear setbacks to be greater than those applicable to detached single-family structures in the same zone and must allow zero-foot side setbacks for Lot or Parcel lines where Townhouse units are attached.
 - e. Height: A Large City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone. If a Large City requires covered or structured parking for townhouses, the applicable height standards must allow construction of at least three stories. If a Large City does not require covered or structured parking, the applicable height standards must allow construction of at least two stories.
 - f. Parking:
 - A. A Large City may not require more than one off-street parking space per Townhouse dwelling unit.
 - B. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
 - C. A Large City must apply the same off-street parking surfacing, dimensional, landscaping, access, and circulation standards that apply to single-family detached dwellings in the same zone.
 - g. Bulk and Scale: A Large City is not required to apply standards to control bulk and scale to new Townhouses. However, if a Large City chooses to regulate scale and bulk, including but not limited to provisions including Lot or Parcel coverage, floor area ratio, and maximum unit size, those standards cannot cumulatively or individually limit the bulk and scale of the cumulative Townhouse project greater than that of a single-family detached dwelling.
 - h. A Large City shall work with an applicant for development to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Townhouse development application.
4. The following governs Large Cities' regulation of siting standards related to Cottage Clusters:
- a. Minimum Lot or Parcel Size: A Large City is not required to apply minimum Lot or Parcel size standards to new Cottage Clusters. However, if a Large City applies standards to regulate minimum Lot or Parcel size for Cottage Clusters on a single Lot or Parcel, the following provisions apply:
 - A. If the minimum Lot or Parcel size in the same zone for a detached single-family dwelling is 7,000 square feet or less, the minimum Lot or Parcel size for a Cottage Cluster may be no greater than 7,000 square feet.
 - B. If the minimum Lot or Parcel size in the same zone for a detached single-family dwelling is greater than 7,000 square feet, the minimum Lot or Parcel size for a Cottage Cluster may not be greater than the minimum Lot or Parcel size for a detached single-family dwelling.
 - b. Minimum Lot or Parcel Width: A Large City is not required to apply minimum Lot or Parcel width standards to Cottage Clusters. However, if a Large City applies standards to regulate minimum Lot or Parcel width for to Cottage Clusters, it may not require a minimum Lot or Parcel width that is greater than the standard for a single-family detached dwelling in the same zone.
 - c. Density: A Large City may not apply density maximums to the development of Cottage Clusters. A Cottage Cluster development must meet a minimum density of at least four units per acre.
 - d. Setbacks: A Large City may not require perimeter setbacks to be greater than those applicable to detached single-family dwellings in the same zone. Additionally, perimeter setbacks applicable to Cottage Cluster dwelling units may not be greater than ten feet. The minimum distance between structures may not be greater than what is required by applicable building code requirements or 10 feet.
 - e. Dwelling Unit Size: A Large City may limit the minimum or maximum size of dwelling units in a Cottage Cluster, but must apply a maximum building footprint of less than 900 square feet per dwelling unit. A Large City may exempt up to 200 square feet in the calculation of dwelling unit footprint for an attached garage or carport. A Large City may not include detached garages, carports, or accessory structures in the calculation of dwelling unit footprint.
 - f. Parking:

- A. A Large City may not require more than one off-street parking space per dwelling unit in a Cottage Cluster.
 - B. A Large City may allow but may not require off-street parking to be provided as a garage or carport.
 - C. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
- g. Lot or Parcel Coverage and Floor Area Ratio: A Large City may not apply Lot or Parcel coverage or floor area ratio standards to Cottage Clusters.
 - h. Nothing in this division precludes a Large City from allowing Cottage Cluster dwelling units on individual Lots or Parcels within the Cottage Cluster development.
 - i. A Large City shall work with an applicant for development to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Cottage Cluster development application.

660-046-0225 Middle Housing Design Standards in Large Cities

1. A Large City is not required to apply design standards to Middle Housing. However, if a Large City chooses to apply design standards to Middle Housing, it may only apply the following:
 - a. Design standards in the Model Code for Large Cities as provided in OAR 660-046-0010(4)(b);
 - b. Design standards that are less restrictive than those in the Model Code for Large Cities as provided in OAR 660-046-0010(4)(b);
 - c. The same clear and objective design standards that the Large City applies to detached single-family structures in the same zone. Design standards may not scale by the number of dwelling units or other features that scale with the number of dwelling units, such as primary entrances. Design standards may scale with form-based attributes, including but not limited to floor area, street-facing façade, height, bulk, and scale; or
 - d. Alternative design standards as provided in OAR 660-046-0235.
2. A Large City may not apply design standards to Middle Housing created as provided in OAR 660-046-0230.

660-046-0230 Middle Housing Conversions

1. Additions to, or conversions of, an existing detached single-family dwelling into Middle Housing is allowed in a Large City pursuant to OAR 660-046-0205(2), provided that the addition or conversion does not increase nonconformance with applicable clear and objective standards, unless increasing nonconformance is otherwise permitted by the Large City's development code.
2. If Middle Housing is created through the addition to, or conversion of, an existing detached single-family dwelling, a Large City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must allow the granting of the same exceptions to Middle Housing.
3. An existing detached single-family dwelling may remain on a Lot or Parcel with a Cottage Cluster as described below:
 - a. The existing single-family dwelling may be nonconforming with respect to the requirements of the applicable code;
 - b. The existing single-family dwelling may be expanded up to the maximum height, footprint, or unit size required by the applicable code; however, an existing single-family dwelling that exceeds the maximum height, footprint, or unit size of the applicable code may not be expanded;
 - c. The existing single-family dwelling shall count as a unit in the Cottage Cluster;
 - d. The floor area of the existing single-family dwelling shall not count towards any Cottage Cluster average or Cottage Cluster project average or total unit size limits; and
 - e. A Large City may apply a time limit on the conversion of a single-family dwelling to a Cottage Cluster not to exceed five years.

660-46-235 Alternative Siting or Design Standards

A Large City may adopt Siting or Design Standards not authorized by OAR 660-046-0220 or OAR 660-046-0225 as allowed if the city can demonstrate that it meets the applicable criteria in this section. Alternative Siting or Design standards do not include minimum Lot or Parcel size and maximum density requirements. If a Large City proposes to adopt alternative Siting or Design Standards, the Large City must submit to the Department findings and analysis demonstrating that the proposed standard or standards will not, individually or cumulatively, cause unreasonable cost or delay to the development of Middle Housing. To demonstrate that, the Large City must consider how a standard or standards, individually and cumulatively, affect the following factors in comparison to what is would otherwise be required under OAR 660-046-0220 or OAR 660-046-0225:

1. The total time and cost of construction, including design, labor, and materials;
2. The total cost of land;
3. The availability and acquisition of land, including in areas with existing development;
4. The total time and cost of permitting and fees required to make land suitable for development;
5. The cumulative livable floor area that can be produced; and
6. The proportionality of cumulative time and cost imposed by the proposed standard or standards in relationship to the public need or interest the standard or standards fulfill.

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled

Senate Bill 458

Sponsored by Senators FREDERICK, KNOPP; Senators GOLDEN, HANSELL, KENNEMER, PATTERSON, Representatives DEXTER, FAHEY, HUDSON, KROPF, LEIF, MEEK, MOORE-GREEN, NOBLE, SMITH DB, WRIGHT, ZIKA (at the request of Habitat for Humanity) (Pre-session filed.)

CHAPTER

AN ACT

Relating to land division for residential development; creating new provisions; and amending ORS 93.277, 94.775, 94.776, 197.365, 197.370, 197.375 and 197.380.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 92.010 to 92.192.

SECTION 2. (1) As used in this section, “middle housing land division” means a partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758 (2) or (3).

(2) A city or county shall approve a tentative plan for a middle housing land division if the application includes:

(a) A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5);

(b) Separate utilities for each dwelling unit;

(c) Proposed easements necessary for each dwelling unit on the plan for:

(A) Locating, accessing, replacing and servicing all utilities;

(B) Pedestrian access from each dwelling unit to a private or public road;

(C) Any common use areas or shared building elements;

(D) Any dedicated driveways or parking; and

(E) Any dedicated common area;

(d) Exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels or tracts used as common areas; and

(e) Evidence demonstrating how buildings or structures on a resulting lot or parcel will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new lots or parcels, how structures or buildings located on the newly created lots or parcels will comply with the Oregon residential specialty code.

(3) A city or county may add conditions to the approval of a tentative plan for a middle housing land division to:

(a) Prohibit the further division of the resulting lots or parcels.

(b) Require that a notation appear on the final plat indicating that the approval was given under this section.

- (4) In reviewing an application for a middle housing land division, a city or county:**
- (a) Shall apply the procedures under ORS 197.360 to 197.380.**
 - (b) May require street frontage improvements where a resulting lot or parcel abuts the street consistent with land use regulations implementing ORS 197.758.**
 - (c) May not subject an application to approval criteria except as provided in this section, including that a lot or parcel require driveways, vehicle access, parking or minimum or maximum street frontage.**
 - (d) May not subject the application to procedures, ordinances or regulations adopted under ORS 92.044 or 92.046 that are inconsistent with this section or ORS 197.360 to 197.380.**
 - (e) May allow the submission of an application for a middle housing land division at the same time as the submission of an application for building permits for the middle housing.**
 - (f) May require the dedication of right of way if the original parcel did not previously provide a dedication.**
- (5) The type of middle housing developed on the original parcel is not altered by a middle housing land division.**
- (6) Notwithstanding ORS 197.312 (5), a city or county is not required to allow an accessory dwelling unit on a lot or parcel resulting from a middle housing land division.**
- (7) The tentative approval of a middle housing land division is void if and only if a final subdivision or partition plat is not approved within three years of the tentative approval. Nothing in this section or ORS 197.360 to 197.380 prohibits a city or county from requiring a final plat before issuing building permits.**

SECTION 2a. Section 2 of this 2021 Act applies only to a middle housing land division permitted on or after July 1, 2022.

SECTION 3. ORS 93.277 is amended to read:

93.277. A provision in a recorded instrument affecting real property is not enforceable if:

(1) The provision would allow the development of a single-family dwelling on the real property but would prohibit the development of, **or the partitioning or subdividing of lands under section 2 of this 2021 Act for:**

- (a) Middle housing, as defined in ORS 197.758; or
 - (b) An accessory dwelling unit allowed under ORS 197.312 (5); and
- (2) The instrument was executed on or after [August 8, 2019] **January 1, 2021.**

SECTION 4. ORS 94.776 is amended to read:

94.776. (1) A provision in a governing document that is adopted or amended on or after [August 8, 2019] **January 1, 2020**, is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of, **or the dividing of lands under section 2 of this 2021 Act for**, housing that is otherwise allowable under the maximum density of the zoning for the land.

(2) Lots or parcels resulting from the division of land in a planned community are subject to the governing documents of the planned community and are allocated assessments and voting right on the same basis as existing units.

SECTION 5. ORS 94.775 is amended to read:

94.775. (1) [Unless the declaration expressly allows the division of lots in a planned community,] Judicial partition by division of a lot in a planned community is not allowed under ORS 105.205[,], **unless:**

- (a) The declaration expressly allows the division of lots in a planned community; or**
- (b) The lot may be divided under ORS 94.776.**

(2) The lot may be partitioned by sale and division of the proceeds under ORS 105.245.

[2] (3) The restriction specified in subsection (1) of this section does not apply if the homeowners association has removed the property from the provisions of the declaration.

SECTION 6. ORS 197.365 is amended to read:

197.365. Unless the applicant requests to use the procedure set forth in a comprehensive plan and land use regulations, a local government shall use the following procedure for an expedited land

division, as described in ORS 197.360, **or a middle housing land division under section 2 of this 2021 Act:**

(1)(a) If the application for [*expedited*] a land division is incomplete, the local government shall notify the applicant of exactly what information is missing within 21 days of receipt of the application and allow the applicant to submit the missing information. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.

(b) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(2) The local government shall provide written notice of the receipt of the completed application for [*an expedited*] a land division to any state agency, local government or special district responsible for providing public facilities or services to the development and to owners of property within 100 feet of the entire contiguous site for which the application is made. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the site.

(3) The notice required under subsection (2) of this section shall:

(a) State:

(A) The deadline for submitting written comments;

(B) That issues that may provide the basis for an appeal to the referee must be raised in writing prior to the expiration of the comment period; and

(C) That issues must be raised with sufficient specificity to enable the local government to respond to the issue.

(b) Set forth, by commonly used citation, the applicable criteria for the decision.

(c) Set forth the street address or other easily understood geographical reference to the subject property.

(d) State the place, date and time that comments are due.

(e) State a time and place where copies of all evidence submitted by the applicant will be available for review.

(f) Include the name and telephone number of a local government contact person.

(g) Briefly summarize the local decision-making process for the [*expedited*] land division decision being made.

(4) After notice under subsections (2) and (3) of this section, the local government shall:

(a) Provide a 14-day period for submission of written comments prior to the decision.

(b) Make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the substantive requirements of the [*local government's*] **applicable** land use regulations. An approval may include conditions to ensure that the application meets the applicable land use regulations. For applications subject to this section, the local government:

(A) Shall not hold a hearing on the application; and

(B) Shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination. The summary statement may be in any form reasonably intended to communicate the local government's basis for the determination.

(c) Provide notice of the decision to the applicant and to those who received notice under subsection (2) of this section within 63 days of the date of a completed application. The notice of decision shall include:

(A) The summary statement described in paragraph (b)(B) of this subsection; and

(B) An explanation of appeal rights under ORS 197.375.

SECTION 7. ORS 197.370 is amended to read:

197.370. (1) Except as provided in subsection (2) of this section, if the local government does not make a decision on an expedited land division **or a middle housing land division, as defined in section 2 of this 2021 Act, within 63 days after the application is deemed complete,** the applicant may apply in the circuit court for the county in which the application was filed for a writ of mandamus to compel the local government to issue the approval. The writ shall be issued unless the local government shows that the approval would violate a substantive provision of the applicable land use regulations or the requirements of ORS 197.360 **or section 2 of this 2021 Act.** A decision of the circuit court under this section may be appealed only to the Court of Appeals.

(2) After seven days' notice to the applicant, the governing body of the local government may, at a regularly scheduled public meeting, take action to extend the 63-day time period to a date certain for one or more applications for an expedited land division **or a middle housing land division** prior to the expiration of the 63-day period, based on a determination that an unexpected or extraordinary increase in applications makes action within 63 days impracticable. In no case shall an extension be to a date more than 120 days after the application was deemed complete. Upon approval of an extension, the provisions of ORS 197.360 to 197.380 **and section 2 of this 2021 Act,** including the mandamus remedy provided by subsection (1) of this section, shall remain applicable to the [expedited] land division, except that the extended period shall be substituted for the 63-day period wherever applicable.

(3) The decision to approve or not approve an extension under subsection (2) of this section is not a land use decision or limited land use decision.

SECTION 8. ORS 197.375 is amended to read:

197.375. (1) An appeal of a decision made under ORS 197.360 and 197.365 **or under ORS 197.365 and section 2 of this 2021 Act** shall be made as follows:

(a) An appeal must be filed with the local government within 14 days of mailing of the notice of the decision under ORS 197.365 (4)[,] and shall be accompanied by a \$300 deposit for costs.

(b) A decision may be appealed by:

(A) The applicant; or

(B) Any person or organization who files written comments in the time period established under ORS 197.365.

(c) An appeal shall be based solely on allegations:

(A) Of violation of the substantive provisions of the applicable land use regulations;

(B) Of unconstitutionality of the decision;

(C) That the application is not eligible for review under ORS 197.360 to 197.380 **or section 2 of this 2021 Act** and should be reviewed as a land use decision or limited land use decision; or

(D) That the parties' substantive rights have been substantially prejudiced by an error in procedure by the local government.

(2) The local government shall appoint a referee to decide the appeal of a decision made under [ORS 197.360 and 197.365] **this section.** The referee [shall] **may** not be an employee or official of the local government. However, a local government that has designated a hearings officer under ORS 215.406 or 227.165 may designate the hearings officer as the referee for appeals of a decision made under ORS 197.360 and 197.365.

(3) Within seven days of being appointed to decide the appeal, the referee shall notify the applicant, the local government, the appellant if other than the applicant, any person or organization entitled to notice under ORS 197.365 (2) that provided written comments to the local government and all providers of public facilities and services entitled to notice under ORS 197.365 (2) and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under subsection (1) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The referee may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and

argument. The referee shall provide the local government an opportunity to explain its decision, but is not limited to reviewing the local government decision and may consider information not presented to the local government.

(4)(a) The referee shall apply the substantive requirements of the [*local government's*] **applicable** land use regulations and ORS 197.360 **or section 2 of this 2021 Act**. If the referee determines that the application does not qualify as an expedited land division [*as described in ORS 197.360*] **or a middle housing land division, as defined in section 2 of this 2021 Act**, the referee shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the referee shall seek to identify means by which the application can satisfy the applicable requirements.

(b) **For an expedited land use division**, the referee may not reduce the density of the land division application.

(c) The referee shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the land use regulations, within 42 days of the filing of an appeal. The referee may not remand the application to the local government for any reason other than as set forth in this subsection.

(5) Unless the governing body of the local government finds exigent circumstances, a referee who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as referee in the appeal.

(6) Notwithstanding any other provision of law, the referee shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The referee shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, including the deposit paid under subsection (1) of this section, against an appellant who does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the referee and costs incurred by the local government, but not the costs of other parties.

(7) The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions or actions made under ORS 197.360 to 197.380 **or section 2 of this 2021 Act**.

(8) Any party to a proceeding before a referee under this section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:

(a) That the decision does not concern an expedited land division as described in ORS 197.360 **or middle housing land division as defined in section 2 of this 2021 Act** and the appellant raised this issue in proceedings before the referee;

(b) That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or

(c) That the decision is unconstitutional.

SECTION 9. ORS 197.380 is amended to read:

197.380. Each city and county shall establish [*an application fee*] **application fees** for an expedited land division **and a middle housing land division, as defined in section 2 of this 2021 Act**. The [*fee shall*] **fees must** be set at a level calculated to recover the estimated full cost of processing an application, including the cost of appeals to the referee under ORS 197.375, based on the estimated average cost of such applications. Within one year of establishing [*the fee required*] **a fee** under this section, the city or county shall review and revise the fee, if necessary, to reflect actual experience in processing applications under ORS 197.360 to 197.380 **and section 2 of this 2021 Act**.

Passed by Senate April 15, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 17, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State



Senate Bill 458 Guidance

(Updated July 8, 2021)

Background

Senate Bill 458 was adopted by the Oregon Legislature in 2021. The bill is a follow-up to House Bill 2001 - the bill that legalizes middle housing in many cities throughout the state - and allows lot divisions for middle housing that enable them to be sold or owned individually.

Senate Bill 458 Summary

For any city or county subject to the requirements of House Bill 2001, Senate Bill 458 requires those jurisdictions to allow middle housing lot divisions for any HB 2001 middle housing type (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) built in accordance with ORS 197.758. Senate Bill 458 only applies to middle housing land divisions permitted on or after June 30, 2022.

The bill sets forth a series of parameters on how a city must process middle housing lot division applications. The city must apply an “expedited land division” process defined in ORS 197.360 through 197.380, and the applicant must submit a tentative plan for the division including the following:

- A proposal for development of middle housing in compliance with the Oregon residential specialty code and applicable middle housing land use regulations,
- Separate utilities for each dwelling unit,
- Easements necessary for utilities, pedestrian access, common use areas or shared building elements, dedicated driveways/parking, and dedicated common area,
- One dwelling unit per each resulting lot or parcel (except common areas), and
- Demonstration that the buildings will meet the Oregon residential specialty code.

Additionally, cities retain the ability to require or condition certain things, including further division limitations, street frontage improvements, and right-of-way dedication if the original parcel did not make such dedications. They *may not* subject applications to approval criteria outside of what is provided in the bill, including that a lot or parcel require driveways, vehicle access, parking, or min/max street frontage, or requirements inconsistent with House Bill 2001, including [OAR Chapter 660, Division 046](#).

Guidance

DLCD staff have received a significant number of questions regarding Senate Bill 458 and how cities or counties can best prepare to comply with the law. Below are answers to commonly asked questions. If you find that you have a question that has not been addressed in this document, please reach out to the Housing Team at housing.dlcd@dlcd.oregon.gov.

SB 458 Deadline

Question: This bill applies to middle housing lot divisions permitted on or after June 30, 2022. Will cities or counties need to incorporate these standards before this deadline?



Answer: *It is highly advisable, but not required, for cities or counties to incorporate middle housing lot division standards into their development codes. On the June 30, 2022 deadline, a city or county that has not incorporated lot division standards within their development codes would utilize the bill language directly to process middle housing lot divisions under SB 458.*

Question: Medium cities need to allow duplexes on lots/parcels that allow single-family detached dwellings by June 30, 2021 (i.e. this year). Are duplexes built between this deadline and the SB 458 deadline eligible for a middle housing lot division?

Answer: *A duplex built pursuant to ORS 197.758 (i.e. House Bill 2001) during this time period would be eligible to apply for a middle housing land division under SB 458 on June 30, 2022, provided it met the applicable requirements outlined in the bill.*

Question: Do cities or counties need to allow lot divisions for middle housing built prior to House Bill 2001?

Answer: *SB 458 requires a middle housing lot division application submit: "A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5)". This means that any lot division proposal will need to demonstrate compliance with both applicable building code and HB 2001 middle housing code in order to be eligible for a lot division under SB 458.*

There is a potential hypothetical scenario in which a pre-HB 2001 middle-housing type could make this demonstration, but 1.) this is an unlikely scenario and 2.) a jurisdiction retains the ability to require the applicant demonstrate the middle housing type complies with applicable building code and middle housing code before approving a middle housing lot division proposal.

Applicability, Application Process, and Submittal Requirements

Question: What middle housing types are eligible for division under SB 458?

Answer: *The bill specifies any lot or parcel that allows middle housing under ORS 197.758 (2) or (3) qualifies for a middle housing land division under SB 458. This includes duplexes, triplexes, quadplexes, townhouses, and cottage clusters in applicable cities and unincorporated, urban portions of Metro counties. Accessory dwelling units are not eligible for lot division under SB 458.*

Question: SB 458 requires cities or counties to apply the expedited land division process. What is this?

Answer: *The expedited land division process is outlined in ORS 197.360 to 197.380. It is an alternative procedure application intended to streamline the review of land divisions under state law. While typical land use applications must be completed within 120 days (ORS 227.178), an expedited land division must be processed within 63 days or extended by the governing body of a local jurisdiction (not to exceed 120 days).*

Question: The expedited land division process under ORS 197.360(1)(b) seems to only include divisions of three or fewer parcels. Does this mean that a middle housing land division is limited to three total parcels?



Answer: No. First, ORS 197.360(1)(a) allows an expedited land division to be any size, while ORS 197.360(1)(b) clarifies that the expedited land division process is also extended to divisions of three or fewer parcels.

Additionally, SB 458 requires that local jurisdictions apply the expedited land division procedure outlined in ORS 197.360 to 197.380, a “middle housing land division” is distinct from an “expedited land division” and may contain more than three parcels, provided that each resultant lot or parcel contains one unit.

Question: Can a city or county apply a typical land division process to a middle housing land division application?

Answer: SB 458 specifies that a city or county “shall apply the procedures under ORS 197.360 to 197.380”. This means that a city or county cannot require a middle housing land division to undergo a standard land division pathway.

Question: This bill seems to suggest that the jurisdiction must approve an application for middle housing land division after or concurrent with the issuance of a building permit, which is backwards in comparison to typical subdivisions. Can you clarify when an applicant may submit an application for a middle housing lot division?

Answer: Senate Bill 458 does not state that a middle housing land division must occur either before or after the issuance of a building permit. We anticipate that most middle housing land divisions will occur before the application for a building permit, similar to other housing land division processes. However, we also anticipate that there may be circumstances in which an applicant submits a land division application after developing a middle housing type. In both scenarios, the applicant must demonstrate that the proposal meets applicable building code and middle housing code as well as the requirements outlined in SB 458.

Additionally, the bill specifies that a city or county may allow the submission of a middle housing land division at the same time as submission of an application for a building permit, but they are not required to.

Lot Division Standards and Conditions for Approval

Question: SB 458 sets out several requirements that applicants must demonstrate outlined in the summary above. What else are jurisdictions allowed to require or condition?

Answer: The bill allows jurisdictions to require or condition the following:

- Prohibition of further division of the resulting lots or parcels
- Require notation in the final plat indicating approval was provided under SB 458 (later on, this will be the resultant ORS reference)
- Require street frontage improvements where a lot or parcel abuts a street (consistent with House Bill 2001)
- Require right-of-way dedication if the original parcel did not previously provide a dedication

Question: Will jurisdictions be able to require applicants to submit tentative and final plats consistent with local platting standards?



Answer: Yes, jurisdictions may require that the applicant submit tentative and final plats in a manner consistent with their applicable platting standards.

Question: Can jurisdictions require that easements be submitted in a form approved by the City Attorney and address specific issues like maintenance and repair, cost-sharing, access, notice, damage, disputes, etc.?

Answer: Yes, cities are permitted to specify the format and issues an easement addresses, provided that they are specific to the types of easements specified in Section 2(2)(c) of the bill, including:

- A. Locating, accessing, replacing and servicing all utilities;
- B. Pedestrian access from each dwelling unit to a private or public road;
- C. Any common use areas or shared building elements;
- D. Any dedicated driveways or parking; and
- E. Any dedicated common area;

Question: What requirements are jurisdictions limited in requiring for a middle housing lot division?

Answer: The bill specifies that a jurisdiction may not subject a middle housing lot division application to approval criteria except as provided in Section 2 of the bill. The bill specifies that this includes the following:

- Require that a lot or parcel provide driveways, vehicle access, parking or minimum or maximum street frontage
- Subject an application to procedures, ordinances or regulations adopted under ORS 92.044 or 92.046 that are inconsistent with Section 2 of the bill or ORS 197.360 to 197.380.

Question: Does that mean jurisdictions cannot require off-street parking for middle housing?

Answer: Jurisdictions are still permitted to require off-street parking and all other land use regulations in accordance with the parameters set forth in administrative rule, OAR Chapter 660, Division 046, but they may not require that each resultant lot or parcel have off-street parking. Such a lot or parcel would be provided access to off-street parking via easement.

Question: Cities or counties cannot require street frontage under SB 458, but can they limit how many lots within a land division do not have street frontage? For example, could a city limit the number of cottages in a cottage cluster development that only have street access from an access easement?

Answer: The bill states that a city or county “may not subject an application to approval criteria except as provided in this section”. The restriction on minimum or maximum frontage is an explicit example of this prohibition. Because there is nothing in this section specifying the number of units that may only have street access from an access easement, a local jurisdiction would not be able to include such a limitation as a standard or condition of approval.



Question: Section 2 (4)(b) allows cities or counties to require street frontage improvements. Would this enable them to require frontage improvements that might otherwise be exempted for single-family detached dwellings, which is prohibited in OAR Chapter 660, Division 046?

Answer: *Yes. This provision would enable a city to require street frontage improvements in situations where it might not otherwise be permitted under administrative rule. We also think this can be a compelling incentive to better address the street frontage deficiencies that persist today in older single-family neighborhoods.*

Question: Does SB 458 require local jurisdictions to approve vertical divisions (i.e. divisions in which one or more units of middle housing is not on the ground floor) of middle housing in addition to horizontal divisions?

Answer: *Senate Bill 458 does not speak to vertical divisions of middle housing and requires that each resultant lot or parcel contain exactly one unit. Therefore, cities are not required to allow vertical divisions of middle housing.*

Townhouses

Question: Does SB 458 apply to lot divisions for townhouses allowed under HB 2001?

Answer: *The bill applies to any lot or parcel that allows middle housing under ORS 197.758, including townhouses. Local jurisdictions must allow townhouse proposals to undergo the lot division process outlined in SB 458, including the application of the procedures outlined in ORS 197.360 through 197.380.*

Question: The bill restricts cities or counties from applying minimum or maximum frontage requirements to lots or parcels created under SB 458. This seems to conflict with OAR 660-046-0220(3)(b) regarding minimum street frontages applied to townhouses. Are jurisdictions permitted to apply minimum street frontages to townhouses?

Answer: *Yes, SB 458 specifies that in order for a middle housing proposal to be eligible for a land division, it must comply with all of the land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5), which includes the full scope of administrative rules outlined in OAR Chapter 660, Division 046. Therefore, local governments are able to, but are not required to, apply minimum street frontages to townhouses as permitted in OAR 660-046-0220(3)(b).*

Local governments will not be able to apply minimum street frontage requirements for individual units for plexes and cottage clusters. However, they may apply lot dimensional standards to the parent lot as provided in OAR 660-046-0220. We recommend that local jurisdictions carefully consider the incentives and resulting form for each middle housing type when developing middle housing land use regulations.



Senate Bill 458 Guidance - Part 2

Department of Land Conservation and Development staff previously published guidance on Senate Bill 458 (2021) in July 2021. This guidance document can be found on the [DLCD webpage](#). Since publishing the first SB 458 guidance, department staff have continued to field questions about the implementation of the bill. This Part 2 document includes responses to common implementation questions and further clarifies the department's interpretation of the legislation.

Q1: Can the referee reviewing appeals decide on an appeal without a formal process (e.g., hearing)?

A: *The statute indicates that an appeals process is possible but does not elaborate on the exact process by which that occurs. The appeals process gives discretion to the referee to establish the means of the appeal process:*

ORS 197.375 (3):

"...the referee may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. The referee shall provide the local government an opportunity to explain its decision but is not limited to reviewing the local government decision and may consider information not presented to the local government."

Q2: Can a city require additional drywall between attached units that result from a middle housing land division? This would increase the fire rating and meet the intent of fire separation for structures that are divided by a lot line (i.e., similar to a townhouse) in alignment with Section R302 of the 2021 Oregon Residential Specialty Code.

A: *Yes, cities have discretion to make that decision. (Refer to OAR 918-020-030(1)(c) Alternative Approval Process for SFD Conversions).*

Q3: Are ADUs allowed with townhouses (attached rowhouses) through HB 2001? If not, could a jurisdiction allow ADUs with townhouses? I see that new ADUs are not allowed after a SB 458 land division. But could an ADU potentially be split off on to its own lot through SB 458?

A: *Because a townhouse is statutorily defined as "middle housing" they are not technically a "single family" dwelling (even though it is a single unit on a single lot). This definition is important because state law also requires that a city allow an ADU in conjunction with a single-family dwelling. Therefore, a city is not required to allow an ADU in conjunction with a townhouse. However, there is nothing in state law that would prevent a city from choosing to allow ADUs on the same lot as a townhouse.*

To the second question related to SB 458 and ADUs - because ADUs are not a middle housing type as defined in HB 2001, an SB 458 expedited middle housing land division is not a reliable legal pathway to divide a lot that has a townhouse/ADU configuration. This interpretation is based on the strictest and most conservative read of the SB 458



language. However, there is possibly reasonable argument to be made that SB 458 could be the legal land division option for developments that include both a middle housing type and an ADU. Section 2(1) of SB 458: (1) As used in this section, “middle housing land division” means a partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758 (2) or (3)”. This argument has yet to be tested.

Additionally, there may also be an opportunity for a city to reconfigure their definitions and zoning standards such that the resulting “ADU” in conjunction with a townhouse becomes the second unit in a “detached duplex.” This would eliminate any confusion related to which standards and which land divisions processes the city could apply to such a development.

Q4: SB 458 states that the resulting lots may only have exactly one dwelling after the partition. “...Exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels or tracts used as common areas...”. Does this mean that a stacked duplex will not be able to add a detached third unit even if it is classified as a detached triplex? Would this also hold true for any existing legacy lot that has stacked units (duplex, triplex, or quadplex) that wishes to add a detached unit? This seems a shame and may ironically drive property owners to undo an existing basement ADU or stacked duplex unit, solely to be able to develop and sell off a detached unit in the rear of their lot.

A: *Correct, SB 458 does not appear to accommodate dividing lots that have two or more units in a stacked configuration. This forces property owners to either use the traditional land division process to create a brand-new lot on the property (which could then be further divided, through an MHELD to allow for two or more units) or dismantle the existing stacked units - neither of which are perfect solutions.*

Q5: Per section 2(d) “exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels or tracts used as common areas”...does this mean a duplex-quadplex cannot be on one tax lot?

A: *Not exactly – SB 458 allows a property owner to decide whether they would like to divide their existing lot into smaller lots such that each lot has one dwelling on it. They are not required to do this and could build any middle housing type on just one tax lot. In the first instance where they choose to divide the lot, the property owner is therefore entitled to sell those individual units on individual lots in a “fee-simple” manner. In the situation where the property owner does not choose to divide the lot into smaller lots, the owner may only rent the units or establish a condominium. These are all options to the property owner, and they are not required to choose one particular path.*

Q6: Per section 2 subsection d, does each unit must be on its own tax lot on its own meter?



A: If the property owner were to decide to invoke SB 458 and divide their existing lot into smaller lots, each resultant lot and individual unit must have its own meters, per the provisions in the bill.

Q7: SB 458 states that a city can require notice to the owners of record of property as shown on the most recent property tax assessment roll of property located, and to the addresses based on the City's current addressing records within 100 feet of the property that is subject of the notice. (SB 458 and ORS 197.365) Can a city require 250 feet instead of 100 feet? Can a city require a posted notice (which is what we require for a regular land division)?

A: ORS 197 offers some guidance here. The statute clearly identifies 100 feet as the distance of the notice. The department cautions cities from requiring any noticing greater than what is in statute. The manner in which the notice is given is less clear. The statute mentions "written notice" to property owners of record which could be interpreted a few ways and could reasonably allow a city to require the notice be posted on site. One note to consider in this decision is that, due to the clear and objective manner of the expedited land division process, the city mustn't consider anecdotal or subjective community context to influence the decision. The city should consider what the benefit is of requiring that the notice be posted on site in this context.

Q8: Does Section 2(b) related to "separate utilities for each dwelling unit" apply only to duplexes-quadplexes? This does not apply to multiplexes on one tax lot such as an apartment building, etc. (built for rentals)? "Middle housing" only correct?

A: Yes, you are correct – HB 2001 and SB 458 only regulate "middle housing" defined as duplexes, triplexes, quadplexes, townhouses, and cottage clusters. Apartment buildings or other types of non-middle housing types are not subject to the separate utilities provision, or any other provision for that matter, of HB 2001/SB 458.

Q9: Can a city require street trees with an expedited land division for middle housing? We currently require it for all residential land divisions.

A: You can require that the "parent" lot meet the street tree standards that are applied to all other residential development but may not require that "child" lots meet the street tree standards per section (2)(a).

Q10: A property owner is interested in developing townhouses on a 13,000 sq ft corner lot. Based on density, they could get 8 townhouse lots. Our design standards allow a maximum of 4 consecutive townhouses, but that just means a driveway or spacing between the two groups of townhomes.

They could certainly go through our standard subdivision process to create 8 townhouse lots. But could they also do an SB 458 land division to create the 8 lots (and then submit building permits for each lot)?



A: There is some flexibility for the city in distinguishing the procedure here. First, it is important to start with the baseline statutory requirements. In this scenario, administrative rule only requires a jurisdiction to allow up to four townhouses (OAR 660-036-0205(4)), but they have the option to accommodate more townhouses, either in their design standards (i.e. greater than 4 units may be attached) or as part of the same lot/site/project (i.e. two or more buildings totaling greater than 4 townhouses on one site). Alternatively, the city could take a stricter interpretation – they only need to allow up to four townhouses on a lot, so if an applicant would like to build eight units, they would need to partition the lot into two “parent” lots first (or as Milwaukie allows – subdivide to eight lots via a standard subdivision process).

Depending on the interpretation, that would affect how SB 458 applies. If a city opts for a stricter interpretation, the applicant will need to partition to “parent” lots before qualifying for a SB 458 application. If a city would like to reduce procedural hurdles, there is nothing stopping them from enabling an applicant to propose more than 4 townhouses on one lot/site right now. It would still qualify for a middle housing land division.

Some jurisdictions have expressed concern about the upper limit on the number of townhouses or cottages, but the department feels the rules pretty clearly support jurisdictions establishing an upper limit on the number of units allowed for one project, provided the jurisdiction meets the baselines articulated in rule (i.e. up to 4 townhouse units, up to 8 cottage units around one common courtyard).

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

Enrolled
Senate Bill 1051

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

CHAPTER

AN ACT

Relating to use of real property; creating new provisions; amending ORS 197.178, 197.303, 197.307, 197.312, 215.416, 215.427, 215.441, 227.175, 227.178 and 227.500; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:**SECTION 1. (1) As used in this section:**

(a) “Affordable housing” means housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater.

(b) “Multifamily residential building” means a building in which three or more residential units each have space for eating, living and sleeping and permanent provisions for cooking and sanitation.

(2) Notwithstanding ORS 215.427 (1) or ORS 227.178 (1), a city with a population greater than 5,000 or a county with a population greater than 25,000 shall take final action on an application qualifying under subsection (3) of this section, including resolution of all local appeals under ORS 215.422 or 227.180, within 100 days after the application is deemed complete.

(3) An application qualifies for final action within the timeline described in subsection (2) of this section if:

(a) The application is submitted to the city or the county under ORS 215.416 or 227.175;

(b) The application is for development of a multifamily residential building containing five or more residential units within the urban growth boundary;

(c) At least 50 percent of the residential units included in the development will be sold or rented as affordable housing; and

(d) The development is subject to a covenant appurtenant that restricts the owner and each successive owner of the development or a residential unit within the development from selling or renting any residential unit described in paragraph (c) of this subsection as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.

(4) A city or a county shall take final action within the time allowed under ORS 215.427 or 227.178 on any application for a permit, limited land use decision or zone change that does not qualify for review and decision under subsection (3) of this section, including resolution of all appeals under ORS 215.422 or 227.180, as provided by ORS 215.427 and 215.435 or by ORS 227.178 and 227.181.

SECTION 2. ORS 215.416 is amended to read:

215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4)(a) *[The application shall not be approved]* **A county may not approve an application** if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(b)(A) A county may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.

(B) This paragraph does not apply to:

(i) Applications or permits for residential development in areas described in ORS 197.307 (5); or

(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (6).

(c) A county may not reduce the density of an application for a housing development if:

(A) The density applied for is at or below the authorized density level under the local land use regulations; and

(B) At least 75 percent of the floor area applied for is reserved for housing.

(d) A county may not reduce the height of an application for a housing development if:

(A) The height applied for is at or below the authorized height level under the local land use regulations;

(B) At least 75 percent of the floor area applied for is reserved for housing; and

(C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.

(e) Notwithstanding paragraphs (c) and (d) of this subsection, a county may reduce the density or height of an application for a housing development if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

(f) As used in this subsection:

(A) "Authorized density level" means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.

(B) "Authorized height level" means the maximum height of a structure that is permitted under local land use regulations.

(C) "Habitability" means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a “visual airport”; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an “instrument airport.”

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway “approach surface” as defined by the Oregon Department of Aviation.

(8)(a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(9) Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county’s land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer’s decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(12) A decision described in ORS 215.402 (4)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 3. ORS 227.175 is amended to read:

227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4)(a) *[The application shall not be approved]* **A city may not approve an application** unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(b)(A) A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the city comprehensive plan or land use regulations.

(B) This paragraph does not apply to:

(i) Applications or permits for residential development in areas described in ORS 197.307 (5); or

(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (6).

(c) A city may not reduce the density of an application for a housing development if:

(A) The density applied for is at or below the authorized density level under the local land use regulations; and

(B) At least 75 percent of the floor area applied for is reserved for housing.

(d) A city may not reduce the height of an application for a housing development if:

(A) The height applied for is at or below the authorized height level under the local land use regulations;

(B) At least 75 percent of the floor area applied for is reserved for housing; and

(C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.

(e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may reduce the density or height of an application for a housing development if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

(f) As used in this subsection:

(A) "Authorized density level" means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.

(B) "Authorized height level" means the maximum height of a structure that is permitted under local land use regulations.

(C) "Habitability" means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway "approach surface" as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home

or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 4. ORS 197.303 is amended to read:

197.303. (1) As used in ORS 197.307, “needed housing” means **all housing [types] on land zoned for residential use or mixed residential and commercial use that is** determined to meet the need shown for housing within an urban growth boundary at [particular] price ranges and rent levels[, including] **that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes [at least]** the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(2) Subsection (1)(a) and (d) of this section [shall] **does** not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(3) A local government may take an exception under ORS 197.732 to the definition of “needed housing” in subsection (1) of this section in the same manner that an exception may be taken under the goals.

SECTION 5. ORS 197.307 is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of state-wide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of **hous-**

ing, including needed housing [on buildable land described in subsection (3) of this section]. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, ar-

chitectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

SECTION 6. ORS 197.312 is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection, "accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

SECTION 7. ORS 215.441 is amended to read:

215.441. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including *[worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.]*:

(a) **Worship services.**

(b) **Religion classes.**

(c) **Weddings.**

(d) **Funerals.**

(e) **Meal programs.**

(f) **Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.**

(g) **Providing housing or space for housing in a building that is detached from the place of worship, provided:**

(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;

(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and

(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.

(2) A county may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.

SECTION 8. ORS 227.500 is amended to read:

227.500. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a city shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including *[worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.]*:

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

(g) Providing housing or space for housing in a building that is detached from the place of worship, provided:

(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;

(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and

(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.

(2) A city may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or regulate the use of real property by a place of worship described in subsection (1) of this section if the city finds that the level of service of public facilities, including transporta-

tion, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a city may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.

SECTION 9. ORS 197.178 is amended to read:

197.178. (1) Local governments with comprehensive plans or functional plans that are identified in ORS 197.296 (1) shall compile and report annually to the Department of Land Conservation and Development the following information for all applications received under ORS 227.175 for residential permits and residential zone changes:

(a) The **total number of complete applications received for residential development, [including the net residential density proposed in the application and the maximum allowed net residential density for the subject zone] and the number of applications approved;**

[(b) The number of applications approved, including the approved net density; and]

[(c) The date each application was received and the date it was approved or denied.]

(b) The total number of complete applications received for development of housing containing one or more housing units that are sold or rented below market rate as part of a local, state or federal housing assistance program, and the number of applications approved; and

(c) For each complete application received:

(A) The date the application was received;

(B) The date the application was approved or denied;

(C) The net residential density proposed in the application;

(D) The maximum allowed net residential density for the subject zone; and

(E) If approved, the approved net residential density.

(2) The report required by this section may be submitted electronically.

SECTION 10. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section **and section 1 of this 2017 Act** upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section **or the 100-day period set in section 1 of this 2017 Act** may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section **and the 100-day period set in section 1 of this 2017 Act do** *[does]* not apply to a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 215.429 **or section 1 of this 2017 Act** as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(10) The periods set forth in *[subsection (1)]* **subsections (1) and (5)** of this section **and section 1 of this 2017 Act** *[and the period set forth in subsection (5) of this section]* may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

SECTION 11. ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use de-

cision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section **or section 1 of this 2017 Act** upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section **or the 100-day period set in section 1 of this 2017 Act** may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section **and the 100-day period set in section 1 of this 2017 Act do** *[does]* not apply to a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee;
or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 **or section 1 of this 2017 Act** as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The *[period]* **periods** set forth in *[subsection (1)]* **subsections (1) and (5)** of this section **and section 1 of this 2017 Act** *[and the period set forth in subsection (5) of this section]* may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

SECTION 12. The amendments to ORS 197.312, 215.416 and 227.175 by sections 2, 3 and 6 of this 2017 Act become operative on July 1, 2018.

SECTION 13. (1) Section 1 of this 2017 Act and the amendments to ORS 197.178, 197.303, 197.307, 215.427, 215.441, 227.178 and 227.500 by sections 4, 5 and 7 to 11 of this 2017 Act apply to permit applications submitted for review on or after the effective date of this 2017 Act.

(2) The amendments to ORS 215.416 and 227.175 by sections 2 and 3 of this 2017 Act apply to applications for housing development submitted for review on or after July 1, 2018.

(3) The amendments to ORS 197.312 by section 6 of this 2017 Act apply to permit applications for accessory dwelling units submitted for review on or after July 1, 2018.

SECTION 14. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by Senate April 19, 2017

Repassed by Senate July 7, 2017

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Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House July 6, 2017

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State

**GUIDANCE ON IMPLEMENTING
THE ACCESSORY DWELLING UNITS (ADU) REQUIREMENT
UNDER OREGON SENATE BILL 1051
UPDATED TO INCLUDE HB 2001 (2019)**



*M. Klepinger's backyard detached ADU, Richmond neighborhood, Portland, OR.
(Photo courtesy of Ellen Bassett and accessorydwellings.org.)*

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

MARCH 2018, updated SEPTEMBER 2019



Introduction

As housing prices in Oregon go up, outpacing employment and wage growth, the availability of affordable housing is decreasing in cities throughout the state. While Oregon's population continues to expand, the supply of housing, already impacted by less building during the recession, has not kept up. To address the lack of housing supply, House Speaker Tina Kotek introduced House Bill (HB) 2007 during the 2017 legislative session to, as she stated, "remove barriers to development." Through the legislative process, legislators placed much of the content of HB 2007 into Senate Bill (SB) 1051, which then passed, and was signed into law by Governor Brown on August 15, 2017 (codified in amendments to Oregon Revised Statute 197.312). In addition, a scrivener's error¹ was corrected through the passage of HB 4031 in 2018.

Among the provisions of SB 1051 and HB 4031 is the requirement that cities and counties of a certain population allow accessory dwelling units (ADUs) as described below:

- a) *A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.*
- b) *As used in this subsection, "accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.*

This requirement became effective on July 1, 2018 and subject cities and counties must now accept applications for ADUs inside urban growth boundaries (UGBs).

On August 8, 2019, Governor Brown signed HB 2001, which established that off-street parking and owner-occupancy requirements are not "reasonable local regulations relating to siting and design." This means that, even if a local development code requires off-street parking and owner-occupancy, as of January 1, 2020, local jurisdictions may not mandate off-street parking spaces for ADUs nor require a property owner to live in either a primary or

¹ The scrivener's error in SB 1051 removed the words "within the urban growth boundary." HB 4031 added the words into statute and thus limited the siting of ADUs to within UGBs. As a result, land within a city with a population greater than 2,500 but that is not within a UGB is not required by this law to be zoned to allow accessory dwelling units. For counties with a population greater than 15,000, only those unincorporated areas within a UGB are required by this law to be zoned to allow accessory dwelling units.

accessory dwelling. The law provides an exception for ADUs that are used as vacation rentals, which may be mandated to provide off-street parking or have owner-occupancy requirements.

Some local governments in Oregon already have ADU regulations that meet the requirements of SB 1051 and HB 2001, however, many do not. Still others have regulations that, given the overall legislative direction to encourage the construction of ADUs to meet the housing needs of Oregon's cities, are not "reasonable." The Oregon Department of Land Conservation and Development (DLCD) is issuing this guidance and model code language to help local governments comply with the legislation. The model code language is included at the end of this document.

Guidance by Topic

The purpose of the following guidance is to help cities and counties implement the ADU requirement in a manner that meets the letter and spirit of the law: to create more housing in Oregon by removing barriers to development.

Number of Units

The law requires subject cities and counties to allow "at least one accessory dwelling unit for each detached single-family dwelling." While local governments must allow one ADU where required, DLCDC encourages them to consider allowing two units. For example, a city or county could allow one detached ADU and allow another as an attached or interior unit (such as a basement conversion). Because ADUs blend in well with single-family neighborhoods, allowing two units can help increase housing supply while not having a significant visual impact. Vancouver, BC is a successful example of such an approach.

Siting Standards

In order to simplify standards and not create barriers to development of ADUs, DLCDC recommends applying the same or less restrictive development standards to ADUs as those for other accessory buildings. Typically that would mean that an ADU could be developed on any legal lot or parcel as long as it met the required setbacks and lot coverage limits; local governments should not mandate a minimum lot size for ADUs. So that lot coverage requirements do not preclude ADUs from being built on smaller lots, local governments should review their lot coverage standards to make sure they don't create a barrier to development. Additionally, some jurisdictions allow greater lot coverage for two ADUs. To address storm water concerns, consider limits to impermeable surfaces rather than simply coverage by structures.

Any legal nonconforming structure (such as a house or outbuilding

that doesn't meet current setback requirements) should be allowed to contain, or be converted to, an ADU as long as the development does not increase the nonconformity and it meets building and fire code.

Design Standards

Any design standards required of ADUs must be clear and objective (ORS 197.307[4]). Clear and objective standards do not contain words like "compatible" or "character." With the exception of ADUs that are in historic districts and must follow the historic district regulations, DLCD does not recommend any special design standards for ADUs. Requirements that ADUs match the materials, roof pitch, windows, etc. of the primary dwelling can create additional barriers to development and sometimes backfire if the design and materials of the proposed ADU would have been of superior quality to those of the primary dwelling, had they been allowed. Other standards, such as those that regulate where entrances can be located or require porches and covered entrances, can impose logistical and financial barriers to ADU construction.

Public Utilities

Development codes that require ADUs to have separate sewer and water connections create barriers to building ADUs. In some cases, a property owner may want to provide separate connections, but in other cases doing so may be prohibitively expensive.

System Development Charges (SDCs)

Local governments should consider revising their SDC ordinances to match the true impact of ADUs in order to remove barriers to their development. In fact, HB 2001, passed by the Oregon Legislature in 2019, requires local governments to consider ways to increase the affordability of middle housing types through ordinances and policies, including waiving or deferring system development charges. ADUs are not a middle housing type, but if a local government is reviewing its SDCs for middle housing, that would be a good time to review ADU SDCs as well. ADUs are generally able to house fewer people than average single-family dwellings, so their fiscal impact would be expected to be less than a single-family dwelling. Accordingly, it makes sense that they should be charged lower SDCs than primary detached single-family dwellings. Waiving SDCs for ADUs has been used by some jurisdictions to stimulate the production of more housing units.

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Accessory Dwellings (model code)

Note: ORS 197.312 requires that at least one accessory dwelling be allowed per detached single-family dwelling in every zone within an urban growth boundary that allows detached single-family dwellings. The statute does not allow local jurisdictions to include off-street parking nor owner-occupancy requirements. Accessory dwellings are an economical way to provide additional housing choices, particularly in communities with high land prices or a lack of investment in affordable housing. They provide an opportunity to increase housing supply in developed neighborhoods and can blend in well with single-family detached dwellings. Requirements that accessory dwellings have separate connections to and pay system development charges for water and sewer services can pose barriers to development. Concerns about neighborhood compatibility and other factors should be considered and balanced against the need to address Oregon's housing shortage by removing barriers to development.

The model development code language below provides recommended language for accessory dwellings. The italicized sections in brackets indicate options to be selected or suggested numerical standards that communities can adjust to meet their needs. Local housing providers should be consulted when drafting standards for accessory dwellings, and the following standards should be tailored to fit the needs of your community.

Accessory dwellings, where allowed, are subject to review and approval through a Type I procedure[, pursuant to Section _____.] and shall conform to all of the following standards:

[A. One Unit. *A maximum of one Accessory Dwelling is allowed per legal single-family dwelling. The unit may be a detached building, in a portion of a detached accessory building (e.g., above a garage or workshop), or a unit attached or interior to the primary dwelling (e.g., an addition or the conversion of an existing floor).*

/

A. Two Units. *A maximum of two Accessory Dwellings are allowed per legal single-family dwelling. One unit must be a detached Accessory Dwelling, or in a portion of a detached accessory building (e.g., above a garage or workshop), and one unit must be attached or interior to the primary dwelling (e.g., an addition or the conversion of an existing floor).]*

B. Floor Area.

1. A detached Accessory Dwelling shall not exceed [800-900] square feet of floor area, or [75-85] percent of the primary dwelling's floor area, whichever is smaller.
2. An attached or interior Accessory Dwelling shall not exceed [800-900] square feet of floor area, or [75-85] percent of the primary dwelling's floor area, whichever is smaller. However, Accessory Dwellings that result from the conversion of a level or floor (e.g., basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the Accessory Dwelling would be more than [800-900] square feet.

C. Other Development Standards. Accessory Dwellings shall meet all other development standards (e.g., height, setbacks, lot coverage, etc.) for buildings in the zoning district, except that:

1. Conversion of an existing legal non-conforming structure to an Accessory Dwelling is allowed, provided that the conversion does not increase the non-conformity;

2. No off-street parking is required for an Accessory Dwelling;
3. Properties with two Accessory Dwellings are allowed [10-20%] greater lot coverage than that allowed by the zone in which they are located; and
4. Accessory dwellings are not included in density calculations.

Definition (This should be included in the “definitions” section of the zoning ordinance. It matches the definition for Accessory Dwelling found in ORS 197.312)

Accessory Dwelling – An interior, attached, or detached residential structure that is used in connection with, or that is accessory to, a single-family dwelling.

Existing Relevant Comprehensive Plan, Development Code and Municipal Code Language Duplexes/ADUs

Comprehensive Plan

LAND USE AND URBANIZATION

POLICIES

RESIDENTIAL LAND USE

The Town Plan map shows two residential categories in Dundee distinguished by density. These densities are described in terms of dwelling units per “gross residential acre.” For planning purposes, it is assumed that 25 percent of each gross residential acre will be developed with streets, schools, parks and other public uses and that 75 percent will be developed with homes. The two residential categories are intended to accommodate different types of residential development, affording families a choice of living accommodations.

Selected areas may be developed as a “planned unit,” with cluster housing and compensating open space. The location and design of a “planned unit development” will be subject to the approval of the planning commission.

In addition to residential uses, public uses compatible with the basic residential uses shall be permitted. Public uses are those serving the residential area such as recreational facilities, community centers, libraries, schools, churches, and utilities.

Low-Density Residential

Most of the city is designated for low-density residential use where the average density will be 3.5 to 4.7 dwelling units per gross acre. The policies and standards for this area are as follows:

1. An overall density of development will be 3.5 to 4.7 dwelling units per gross acre. This equals standard lot sizes of 7,000 to 9,000 square feet, allowing for street and other open spaces. Many areas are already developed at larger lot sizes than this, so the overall density will likely be lower.
2. Residential subdivisions will be developed with paved streets, sidewalks, and gutters according to city or county standards. Utilities will be placed underground where feasible.
3. Developments will coincide with the provision of public streets, water, and sewerage facilities. These facilities shall be capable of adequately serving all intervening properties as well as the proposed development and will be designed to meet the city or county standards.
4. Planned unit development will be encouraged on tracts large enough to accommodate 10 or more dwellings.

5. A stormwater drainage plan will be submitted with all proposed subdivisions and partitionings to show how stormwater will be handled to avoid a future effect on other property. Where needed, storm sewers will be required as a condition of approving plats or partitionings.

Add policy on duplex/ADUs

Medium-Density Residential

The area designated for medium-density residential lies behind the commercial area parallel to U.S. Highway 99W. The predominant use in this area will be single-family housing; however, provision is also made for multifamily dwellings. Policies and standards for this area are as follows:

1. The maximum overall density will be about 10 dwelling units per acre except in the case of mobile home parks where higher densities are permitted. Existing development is at a much lower density than this and will likely continue in the near future.
2. Residential subdivisions will be developed with paved streets, curbs, gutters, and sidewalks according to the city or county standards. Utilities will be placed underground where feasible.
3. Developments will coincide with the development of public streets, water, and sewerage facilities. These facilities shall be capable of adequately serving all intervening properties as well as the proposed development and will be designed to meet the city or county standards.
4. Planned unit development will be encouraged on tracts large enough to accommodate 10 or more dwellings.
5. A stormwater drainage plan will be submitted with all proposed subdivisions and partitionings to show how stormwater will be handled to avoid a future effect on other property. Where needed, storm sewers will be required as a condition of approving plots or partitionings.

Add policy on duplex/ADUs

HOUSING

POLICIES

1. The City will encourage higher density (multi-family) housing to diversify the housing stock and conserve energy.
2. Smaller and medium lot sizes will be encouraged in some areas of the city to provide lower cost housing and conserve land.
3. Highway uses will be kept from intruding into adjacent neighborhoods.

4. The hillside will generally be kept in R-1 and the lower part of the city in the R-2 zone.
5. The priority area to develop for new residential use is the area east of the western part of the city. The eastern part of the city will be developed when public need is established.

Add policy on duplexes and ADUs

Title 17 Development Code

Chapter 17.202

ZONING REGULATIONS

17.202.010 Purpose.

[...]

C. Single-Family Residential Zone (R-1). The R-1 zone preserves existing single-family residential areas and provides for future single-family residential housing opportunities at target densities between three and one-half and four units per acre. The R-1 zone is consistent with the low density residential comprehensive plan designation. Add text on duplexes and ADUs as allowed uses

D. Single-Family Residential Zone (R-2). The R-2 zone provides for a mixture of single-family and duplex housing at target densities between four and 4.7 units per acre. The R-2 zone is consistent with the low density residential comprehensive plan designation. Add text on duplexes and ADUs as allowed uses

E. Medium Density Residential Zone (R-3). The R-3 zone provides for a mixture of attached and detached housing at target densities of up to 10 units per acre. The R-3 zone is consistent with the medium density residential comprehensive plan designation. Add text on duplexes and ADUs as allowed uses

[...]

17.202.020 Allowed uses.

Table 17.202.020 lists the uses that are allowed by each of the city's base zones. Where a specific use is not listed, and is not otherwise defined in DMC Division 17.500 as an example of a permitted use, the city may find the use is allowed or not allowed in the subject zone, pursuant to DMC 17.103.040.

Notwithstanding the provisions below, additional limitations may apply to uses within overlay zones. For requirements applicable to the city's overlay zones – flood plain overlay, greenway management overlay, and riparian corridor overlay – please refer to Chapter 17.204 DMC.

Property owners are responsible for verifying whether a specific development is allowed on a particular site. Approval of a Type I checklist or site development review under Chapter 17.402 DMC may be required prior to commencing a use.

Table 17.202.020 is organized as follows:

- A. Residential uses.
- B. Public and institutional uses.
- C. Commercial uses.
- D. Industrial and mixed employment uses.
- E. Agricultural and natural resource uses.
- F. Accessory uses.
- G. Temporary uses.

Legend for Table 17.202.020:

- P: Permitted use
- CU: Conditional use
- S: Special use requirements apply
- N: Use is not permitted

Table 17.202.020: Zoning Use Table												
Uses	P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements	
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU		
A. Residential Uses												
Single-Family Dwelling, including manufactured homes subject to DMC 17.203.100	P	P	P	S	S	N	N	N	See Ag Uses	See Ag Uses	DMC 17.203.190 in commercial zones	
Two-Family (Duplex) Dwelling, Single-Family Attached Dwelling	N	S	S	S	S	N	N	N	N	N	DMC 17.203.080 DMC 17.202.040 for single-family attached DMC 17.203.190 commercial zone	

- Commented [DR1]:** Delete Two family reference and use Duplex dwelling.
- Commented [DR2]:** Revise to P, Duplex permitted in R-1. Comply with HB 3395.
- Commented [DR3]:** Revise to P, Duplex permitted in R-1. Comply with HB 3395.
- Commented [DR4]:** Revise to P, Duplex permitted in R-1. Comply with HB 3395.

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
Zero Side Yard Dwellings (Townhouse or Single-Family Detached)	N	N	S	N	N	N	N	N	N	N	DMC 17.202.040(G)
Manufactured Dwelling Park or Mobile Home Park	N	N	S	N	N	N	N	N	N	N	DMC 17.203.110
Multifamily Dwelling	N	N	P	S	S	N	N	N	N	N	DMC 17.203.120 in residential zones; DMC 17.203.200 for ground floor multifamily in commercial zones; DMC 17.203.190 for existing residential uses in commercial zones
Dwelling(s), above permitted ground floor commercial	N	N	N	P	P	N	N	N	N	N	
Boarding, Lodging, or Rooming House	N	N	P	N	N	N	N	N	N	N	
Accessory Dwelling Unit	S	S	S	S	S	N	N	N	N	N	DMC 17.203.260
Home Occupation	S	S	S	S	S	N	N	N	S	S	DMC 17.203.090 , DMC 17.203.180 in EFU
Family Child Care Home	P	P	P	P	P	N	P	N	N	N	
Residential Care Home	P	P	P	S	S	N	N	N	N	N	DMC 17.203.190 for existing residential uses in commercial zones
Residential Care Facility	N	N	P	S	S	N	N	N	N	N	DMC 17.203.200 for ground floor multifamily and residential care

Table 17.202.020: Zoning Use Table												
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted												
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements	
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU		
												facilities in commercial zones
B. Public and Institutional Uses												
Cemetery	CU	CU	CU	N	N	N	CU	N	N	N		
Church	CU	CU	CU	P	P	N	P	N	CU	S	DMC 17.203.180 , see limits in OAR 660-33 in EFU	
Community Building	CU	CU	CU	P	P	N	P	N	CU	CU+S	DMC 17.203.180 , see limits in OAR 660-33 in EFU	
Club, Lodge, or Fraternal Organization	CU	CU	CU	P	P	N	P	N	CU	N		
Day Care Facility, Preschool	CU	CU	CU	P	P	N	CU	N	N	N		
Emergency Service Facility	N	N	N	P	CU	N	P	N	N	S	DMC 17.203.180 , see limits in OAR 660-33 in EFU	
Hospital	N	N	CU	P	N	N	CU	N	N	N		
Mortuary	N	N	N	P	N	N	CU	N	N	N		
Nursing Home	N	N	CU	N	N	N	CU	N	N	N		
Parking Facility	N	N	N	P	P	P	P	N	N	N		
Parks Not to Exceed One-Half Acre, including Playgrounds, Trails, Nature Preserves, Athletic Fields, Courts, Swim Pools, including Accessory Buildings and Structures	P	P	P	P	P	N	P	S	CU	CU+S	DMC 17.203.130 , DMC 17.203.180 in EFU, see limits in OAR 660-33 in EFU	
Parks Greater Than One-Half Acre, including Playgrounds, Trails,	S	S	S	S	S	N	S	S	CU+S	CU+S	DMC 17.203.130 , DMC 17.203.180 in EFU, see limits in OAR 660-33 in EFU	

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
Nature Preserves, Athletic Fields, Courts, Swim Pools, including Accessory Buildings and Structures											
School, College or Vocational	CU	CU	CU	CU	CU	N	CU	N	N	N	
School, Commercial	N	N	N	P	P	N	N	N	N	N	
School, Elementary or Secondary	CU	CU	CU	N	N	N	P	N	N	N	
Solid Waste Disposal and Recycling Sites and Facilities, except as accessory to a permitted use	N	N	N	N	N	CU	CU	N	N	N	
Utility, Area	CU	CU	CU	CU	CU	P	P	N	N	N	
Wireless Communication Facilities	CU+S	CU+S	CU+S	CU+S	CU+S	S	S	N	CU+S	S	DMC 17.203.170 , DMC 17.203.180 in EFU, see limits in OAR 660-33 in EFU
Transportation Facilities, per DMC 17.501.020	P	P	P	P	P	P	P	P	P	*	See limits in OAR 660-033 in EFU
Transit Centers and Park-and-Ride Lots	CU	CU	CU	CU	CU	CU	CU	CU	CU	CU	
C. Commercial Uses											
Amusement and Recreation Facilities, including Theaters, Bowling Alleys, Concert Venues	N	N	N	CU/S	CU/S	N	CU	N	N	N	DMC 17.203.220 in commercial zones; see DMC 17.203.140 , Outdoor/unenclosed uses, DMC 17.203.070 if drive-through or walk-up service
Art Gallery, Artisan or Craftsman Studio, Photographic	N	N	N	P	P	N	N	N	N	N	

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
Studio, Picture Framing, similar uses											
Automobile Service Station	N	N	N	CU+S	N	S	N	N	N	N	DMC 17.203.040
Automotive Repair and Service, including Car Wash, Tire Sales and Repair/Replacement, Painting, Auto Body Shop; includes Automobiles, Motorcycles, Aircraft, Boats, RVs, Trucks	N	N	N	CU+S	N	S	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Automotive Sales and Rental, including Automobiles, Motorcycles, Aircraft, Boats, RVs, and Trucks	N	N	N	CU+S	N	N	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Automotive Parts and Accessory Sales	N	N	N	S	N	N	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Bakery, Butcher Shop, Candy Manufacturing, and similar uses, when retail sales provided on premises	N	N	N	P/S	P/S	N	N	N	N	N	See DMC 17.203.070 if drive-through or walk-up service
Banks and Other Financial Institutions	N	N	N	P/S	P/S	N	N	N	N	N	See DMC 17.203.070 if drive-through or walk-up service
Barber or Beauty Shop	N	N	N	P	P	N	N	N	N	N	
Bed and Breakfast Inn, with three or	P	P	P	P	P	N	N	N	N	N	DMC 17.203.050

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
Marijuana Dispensary or Retail Facility	N	N	N	P/S	P/S	N	N	N	N	N	DMC 17.203.250
Marijuana Producer or Grow Site	N	N	N	CU + S	N	P/S	N	N	P/S	P/S	DMC 17.203.250
Marijuana Processor	N	N	N	CU + S	N	P/S	N	N	N	N	DMC 17.203.250
Marijuana Wholesaler	N	N	N	CU + S	N	P/S	N	N	N	N	DMC 17.203.250
Marijuana Testing Laboratory or Research Certificate	N	N	N	P/S	N	P/S	N	N	N	N	DMC 17.203.250
Marina, with no boat repair	N	N	N	N	N	N	CU+S	S	CU	N	DMC 17.203.140
Medical/Dental Clinic	N	N	N	P	P	N	N	N	N	N	
Paint and Painting Supplies Sales or Rental	N	N	N	P	P	P	N	N	N	N	
Psilocybin Facilities											
Psilocybin Service Center	N	N	N	S	S	N	N	N	N	N	DMC 17.203.280
Restaurants, and Other Eating and Drinking Establishments	N	N	N	P/S	P/S	N	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed, DMC 17.203.070 if drive-through or walk-up service
Retail Sales, including Accessory Services and Repair, except as specified elsewhere in this table	N	N	N	P/S	P/S	N	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed, DMC 17.203.070 if drive-through or walk-up service

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
Retail Small-Scale Winery, Brewery or Distillery	N	N	N	S	S	N	N	N	N	N	DMC 17.203.060
Service-Related Businesses, except as specified elsewhere in this table	N	N	N	P/S	P/S	N	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed, DMC 17.203.070 if drive-through or walk-up service
Tractor and Farm Equipment, or Logging Equipment, Sales and Service	N	N	N	CU+S	N	S	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
D. Industrial and Mixed Employment Uses											
Airports, and Heliport Facilities	N	N	N	N	N	CU	CU	N	N	N	
Auction Yards	N	N	N	N	N	CU+S	CU	N	N	N	DMC 17.203.140
Beverage and Bottling Facility, Winery, Brewery, or Distillery, including Warehousing and Distribution; see also Retail Small-Scale Winery, Brewery, or Distillery	N	N	N	N	N	P	N	N	N	N	
Bulk Storage of Flammable Liquids or Gases; Petroleum Products Storage and Distribution; Wood or Biomass Fuel Dealers	N	N	N	N	N	CU	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Call Centers and Data Centers	N	N	N	CU	CU	CU	N	N	N	N	
Cement, Glass, Clay, and Stone Products Manufacture	N	N	N	N	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed,

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
											DMC 17.203.270 for accessory uses
Chemical, Fertilizer, Insecticide, Paint Product Manufacture, or Similar Uses	N	N	N	N	N	CU	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Concrete or Asphalt Batch Plants	N	N	N	N	N	CU+S	N	N	N	N	DMC 17.203.140
Dairy Products Manufacture, e.g., butter, milk, cheese, ice cream	N	N	N	N	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed, DMC 17.203.270 for accessory uses
Dwelling for a Caretaker or Watchperson	N	N	N	N	N	P	P	P	N	N	
Feed and Seed Facilities, including Grain Elevators and Storage	N	N	N	N	N	P	N	N	P	CU+S	DMC 17.203.140 if outdoors/unenclosed, DMC 17.203.180 in EFU, see limits in OAR 660-33 in EFU
Finished Textile and Leather Products Manufacture	N	N	N	N	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed, DMC 17.203.270 for accessory uses
Food Processing, including Canning, Freezing, Drying and Similar Food Processing and Preserving	N	N	N	N	N	P	N	N	P	CU+S	DMC 17.203.140 if outdoors/unenclosed, DMC 17.203.180 in EFU, see limits in OAR 660-33 in EFU, DMC 17.203.270 for accessory uses
Freight Terminals, including Loading Docks, Storage, Warehousing, Wholesale Distribution, Cold Storage; except	N	N	N	N	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
personal storage such as mini-storage warehouses											
Machine Shop, and Sales, Service and Repair of Machinery	N	N	N	N	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Metal Plating	N	N	N	N	N	CU	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Metal Products Manufacture	N	N	N	N	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Newspaper, Periodical, Publishing and Printing	N	N	N	CU	CU	P	N	N	N	N	
Outdoor Storage of Materials of an Industrial Character	N	N	N	N	N	CU+S	N	N	N	N	DMC 17.203.140
Personal Storage, such as Mini-Storage Warehouses	N	N	N	CU+S	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed; DMC 17.203.230 in the community commercial zone
Psilocybin Facilities											
Psilocybin Production Manufacturer	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	DMC 17.203.280
Psilocybin Laboratory	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	DMC 17.203.280
Rendering Plants	N	N	N	N	N	N	N	N	N	N	
Small-Scale Manufacturing in the community commercial zone, as defined in DMC 17.203.150 .	N	N	N	S	N	N	N	N	N	N	
Specialty Trade Contracting	N	N	N	CU	N	P	N	N	N	N	

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
Facilities, conducted wholly within a building											
Specialty Trade Contractor Facilities, conducted all or partially outdoors	N	N	N	N	N	S	N	N	N	N	DMC 17.203.140
Welding Shop and Blacksmith, conducted wholly within a building	N	N	N	CU	N	P	N	N	N	N	DMC 17.203.270 for accessory uses
Welding Shop and Blacksmith, conducted all or partially outdoors	N	N	N	N	N	S	N	N	N	N	DMC 17.203.140 , DMC 17.203.270 for accessory uses
Wood Products Manufacture, including sawmills, paper and allied products, and secondary wood products	N	N	N	N	N	P	N	N	N	N	DMC 17.203.140 if outdoors/unenclosed
Wrecking, Demolition, Junk Yards, including Recycling Firms	N	N	N	N	N	CU+S	N	N	N	N	DMC 17.203.140
E. Agricultural and Natural Resource Uses											
Gardening	P	P	P	P	P	P	P	P	P	P	
Farm Use	N	N	N	N	N	N	N	N	P	P	See DMC Title 6 and DMC 8.16.020 . Livestock not allowed in A
Dwelling, Primary, Customarily Provided in Conjunction with Farm Use	N	N	N	N	N	N	N	N	P	S	DMC 17.203.180

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
Wellhead; Operations for the Exploration for Minerals as defined by ORS 517.750 .											
Operations Conducted for Mining and Processing of Geothermal Resources as defined by ORS 522.005 not otherwise permitted; Operations Conducted for Mining, Crushing or Stockpiling of Aggregate and Other Mineral and Other Subsurface Resources; Processing of Other Mineral Resources and Other Subsurface Resources	N	N	N	N	N	N	N	N	N	CU+S	DMC 17.203.180 , see OAR 660-33 for limits
Veterinary Clinic with On-Site Service of Farm Animals	N	N	N	N	N	N	N	N	P	P+S	DMC 17.203.180 , see OAR 660-33 for limits
Any other use specifically listed in OAR Chapter 660 , Division 33 that must be an allowed use in EFU zones	N	N	N	N	N	N	N	N	N	P	DMC 17.203.180 , see OAR 660-33 for limits
F. Accessory Uses	P/CU	P/CU	P/CU	P/CU	P/CU	P/CU/S	P/CU	P/CU	P/CU	P/CU/S	P or CU per primary use, DMC 17.203.180 in

Table 17.202.020: Zoning Use Table											
P: Permitted Use; CU: Conditional Use; S: Special Use Requirements Apply; N: Not Permitted											
Uses	Residential			Commercial and Employment			Public and Agriculture				Special Use Requirements
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
											EFU, DMC 17.203.270 in LI
G. Temporary Uses	S	S	S	S	S	S	S	S	S	S	DMC 17.203.160, plus DMC 17.203.180 in EFU, see OAR 660-33 for limits in EFU

* Transportation uses in the EFU zone shall be regulated pursuant to OAR 660-033 and ORS [215.213](#) and [215.283](#).

[Ord. 588-2024 § 1 (Exh. A); Ord. 586-2024 § 1 (Exh. A); Ord. 572-2021 § 1 (Exh. B); Ord. 565-2018 § 1 (Exh. A); Ord. 563-2018 § 1 (Exh. A); Ord. 545-2016 § 1; Ord. 542-2015 § 3 (Exh. B); Ord. 539-2015 § 1; Ord. 537-2014 § 1; Ord. 534-2014 § 1 (Exh. A); Ord. 521-2013 § 3 (Exh. A)].

17.202.030 Lot and development standards by zoning district.

Table 17.202.030 lists the general lot and development standards for each of the city’s base zones. Specific development standards for access, parking, landscaping, and public improvements, among others, are located in DMC Division 17.300.

Notwithstanding the provisions below, additional standards may apply in specific locations, such as at street intersections, within overlay zones, adjacent to natural features, and other areas as may be regulated by this code or subject to state or federal requirements. For requirements applicable to the city’s overlay zones – flood plain overlay, and greenway management overlay, and riparian corridor overlay – please refer to Chapter 17.204 DMC.

Table 17.202.030 is organized as follows:

- A. Minimum lot area.
- B. Yard setback requirements.
- C. Maximum structure height.
- D. Minimum lot dimensions.
- E. Maximum lot coverage.

Table 17.202.030 – Lot and Development Standards by Zoning District												
Uses	Residential			Commercial and Employment			Public and Agriculture			Exceptions See also DMC 17.202.040		
	R-1	R-2	R-3	C	CBD	LI	P	PO	A		EFU	
A. Minimum Lot Area (Square Feet) – (b) applies to all zones												
Single-Family Dwelling (1 unit)	9,000	7,000	5,000 (a)									(a) 3,000 per dwelling unit if more than one dwelling on a lot
Duplex Dwelling (2 units)	NA	10,000	6,000 (a)									(b) Where the area of the ground exceeds 11 percent of the area of the lot, the lot shall be increased as follows: 11 – 15% slope = min. lot area + 20% 16 – 20% slope = min. lot area + 50% 21 – 25% slope = min. lot area + 100% 26 – 30% slope = min. lot area + 200% 31%+ slope = specified by city engineer
Multifamily Dwellings (3 or more units)	NA	NA	3,000 per unit	5,000 (all uses)	5,000 (all uses)	5,000 (all uses)	5,000 (all uses)	(c)	20 acres (all uses)	20 acres (all uses)		(c) Lot and development standards in the PO zone are subject to approval of a parks/open space master plan, per DMC 17.203.130.
Nonresidential Uses	Adequate to contain all structures within required yard setbacks											
B. Yard Setback Requirements (Feet)												
Primary Front Yard – Minimum	20(d)	20(d)	15	10(j)	5(j)	10*	20		20	30		(d) Minimum front yard for unenclosed, single story porch or deck is 15.
Secondary Front Yard – Minimum	20(d)	15	15	10(j)	5(j)	10*	20	(c)	20	20		(e) Minimum side or rear setback adjoining residential zone is 20 feet.

Commented [DR5]: Change 2,500 sq. ft, 50% of single-family lot size.

Commented [DR6]: Make 9,000 sq.ft., needs to match single-family lot size. HB 2001.

Commented [DR7]: Make 7,000 sq.ft., needs to match single-family lot size. HB 2001.

Commented [DR8]: Make 5,000 sq. ft., needs to match single-family lot size. HB 2001.

Table 17.202.030 – Lot and Development Standards by Zoning District											
Uses	Residential			Commercial and Employment			Public and Agriculture			Exceptions See also DMC 17.202.040	
	R-1	R-2	R-3	C	CBD	LI	P	PO	A		EFU
Primary Front Yard – Maximum				20(k)	15(k)						(f) Minimum rear setback is 50 feet for nonresidential uses.
Secondary Front Yard – Maximum				40(k)	30(k)						(g) Minimum side setback is 30 feet for nonresidential uses.
Side Yard for a Principal Structure	10(p)	7.5(p)	5(p)	None(e)	None(e)	None(e)(p)	None(h)(p)		10(p)	15(g)(p)	(h) Minimum side or rear setback adjoining residential zone is 10 feet.
Rear Yard for a Principal Structure	20(p)	15(p)	15(p)	None(e)	None(e)	None(e)(p)	None(h)(p)		20(p)	30(f)(p)	(i) Limited to six common wall dwellings on individual lots.
Rear Yard or Side Yard for an Accessory Structure	1/3 of building height, none if 6 feet high or less(p)			None(e)	None(e)	None(e)(p)	None(h)(p)		20 rear 10 side (p)	20(p)	(j) Minimum front yard setbacks apply only abutting Highway 99W right-of-way. Minimum front setback abutting other public rights-of-way is zero.
Side Yards for Zero Side Yard Dwelling Units	NA	NA	10, except zero yard(i)	NA	NA	NA	NA		NA	NA	(k) Compliance with the maximum front yard standards is determined as specified in DMC 17.202.060(A).
Setback from Partial Street	New structures or structure additions on lots abutting an existing public street that does not meet the minimum standards of DMC 17.305.030 for right-of-way width shall provide setbacks sufficient to allow for the future widening of the right-of-way, plus the minimum required yard setback. Building permits shall not be issued for new structures or additions that do not meet this standard.										
C. Maximum Structure Height (Feet)											
Dwellings	30	30	30	45(l)	45(l)	45	45		30	35	(l) New structures shall be limited to three stories.
Non-Dwelling Structures	30	30	30	45(l)	45(l)	45	45(m)	(c)	45	45	(m) Telecommunication structures in excess of 45 feet in height allowed with conditional use permit.

Table 17.202.030 – Lot and Development Standards by Zoning District											
Uses	Residential			Commercial and Employment			Public and Agriculture				Exceptions See also DMC 17.202.040
	R-1	R-2	R-3	C	CBD	LI	P	PO	A	EFU	
D. Minimum Lot Dimensions (Feet)											
Lot Width and Frontage	60	60	50(n)	None			None	(c)	None	None	(n) Minimum lot width for lots containing townhouse dwelling units built the full width of the lot is 20 feet.
Lot Depth	90(o)	90(o)	80(o)	None			None		None	None	(p) See 17.204.060 for Riparian Corridor setbacks
E. Maximum Lot Coverage (% of Lot)											
Lot Coverage	35	40	45	None			None	(c)	None	None	
Parking Area Coverage	30	30	30	None			None		None	None	
Combined Lot and Parking Area Coverage	65	70	75	None			None		None	None	

Commented [DR9]: Should there be an increase to accommodate ADUs?

Commented [DR10]: Should there be an increase to accommodate ADUs?

* Code reviser's note: Ordinance 547-2016 amends the setback to be 10 feet from property lines adjacent to a street. See DMC 17.202.070(C).

[Ord. 586-2024 § 1 (Exh. A); Ord. 534-2014 § 1 (Exh. A); Ord. 521-2013 § 3 (Exh. A)].

17.202.040 Yard standards, exceptions to yard and building height standards.

G. Zero Side Yard Dwelling Units (Single-Family Detached, Attached, or Townhouse). Zero side yard dwelling units, including single-family detached, attached, or townhouse dwelling units, shall meet the following use and development standards:

Commented [DR11]: Delete single-family detached. Language is confusing.

Commented [DR12]: Delete detached.

1. Location. Zero side yard dwelling units are permitted where shown in Table 17.202.020.
2. Number of Attached Units. No more than six townhouse dwelling units, each on a lot held in separate ownership, may be attached in the R-3 zone.
3. Front yards, either primary or secondary, may not be used as zero yards.
4. Side Yards. Each zero side yard dwelling unit shall be built to at least one side lot line. The side yard setback opposite the zero side yard shall be twice the minimum side yard setback in the applicable zone. This does not apply to townhouse dwellings that have both side yards as zero yards.
5. Maintenance Easement. As a condition of issuance of a permit for any building having an exterior wall contiguous to a property, the applicant shall furnish an easement from the owner of the property adjacent to said wall providing for ingress, egress, and use of such adjacent property for the purpose of

maintaining, repairing, and replacing the building. In the case of common wall development, the easement shall allow maintenance of the shared wall. Said easement shall be appurtenant to the property on which the building is located and shall be approved as to form by the city recorder and shall be recorded with the county prior to issuance of the permit. [Ord. 534-2014 § 1 (Exh. A); Ord. 521-2013 § 3 (Exh. A)].

Chapter 17.203
SPECIAL USE STANDARDS

17.203.080 Two-family (duplex) dwellings.

Duplexes shall comply with all of the following requirements:

A. Distribution. In the R-2 zone, not more than three duplexes shall be located on any two contiguous blocks.

B. Orientation. Every duplex shall be designed with its primary entrance oriented to an adjacent street, or where it is impractical to orient a primary entrance to a street, the surface area of the building elevation facing the street shall be comprised of not less than 20 percent windows. The planning official may waive this standard where a proposed duplex is not located adjacent to a street but is oriented to an open space or common area; provided, that any elevation facing a street shall meet the foregoing standard for windows.

C. Materials. Duplexes shall have exterior materials (siding, roofing, windows and trim) that are the same as or similar to the materials used on adjacent single-family dwellings, except that the planning official may waive this standard where the materials used on adjacent single-family dwellings are of inferior quality to those the applicant proposes. [Ord. 521-2013 § 3 (Exh. A)].

17.203.140 Outdoor/unenclosed uses.

[...]

E. Outdoor Storage Uses in Any Zone. Outdoor storage, where allowed as a primary use, or as an accessory use to any non-single-family or duplex residential use, shall be subject to the following:

1. Outdoor storage areas shall be screened according to the standards of DMC 17.302.060, Screening and buffering.
2. Areas used for outdoor storage of automobiles, motorcycles, trucks, trailers, boats, recreational vehicles, manufactured structures, or other vehicles shall be paved with a concrete or asphalt surface. In a commercial zone, these areas shall be subject to the parking lot screening requirements of DMC 17.302.060(C)(1) and (2), but shall not be subject to the parking lot landscaping standards of DMC 17.302.060(C)(3). Where an area used for outdoor storage of automobiles, motorcycles, trucks, trailers, boats, recreational vehicles, manufactured structures, or other vehicles is within 20 feet of the Highway 99W right-of-way, trees shall be planted within the required landscaped strip in compliance with DMC 17.302.070, in addition to meeting the requirements of DMC 17.302.060(C)(1) and (2).

Commented [DR13]: Delete Special Use standards. Comply with HB 2295 and HB 2001.

Commented [DR14]: Delete duplex reference. Need to treat same as single-family. HB 3395 and HB 2001.

3. Outdoor storage shall not occur in a required front yard or in a required landscaped area. Outdoor storage, where allowed in a required side or rear yard, shall not exceed 10 feet in height.

4. Outdoor storage shall be maintained so as not to be a nuisance per the Dundee Municipal Code. [Ord. 534-2014 § 1 (Exh. A); Ord. 521-2013 § 3 (Exh. A)].

17.203.260 Accessory dwelling unit (ADU).

A. Purpose. The purpose of these standards is to allow accessory dwelling units to diversify the housing choices in Dundee while also ensuring the scale is compatible with adjacent development.

B. Review Process. Accessory dwellings shall be processed as a Type I application.

C. Standards.

1. An ADU is only permitted on a lot with a single-family detached dwelling per Table 17.202.020.

2. An interior or attached accessory dwelling is permitted for existing single-family dwellings in the C and CDB zones that meet the requirements of DMC 17.203.190.

3. An accessory dwelling shall not exceed 900 square feet, or 50 percent of the primary dwelling's floor area, whichever is smaller. An interior accessory dwelling that results from conversion of an existing level or floor (e.g., basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the accessory dwelling would be more than 900 square feet.

4. Design Standards.

a. Exterior finish materials must visually match the exterior finish materials of the primary dwelling in type, size, and placement.

b. If the street facing facade of the ADU is visible from the street, its windows must match, in proportion and orientation, the windows of the primary dwelling.

c. A separate entrance shall be provided for the ADU.

5. The accessory dwelling shall meet all applicable standards for the underlying zone. The maximum height allowed for a detached ADU is 20 feet. A detached ADU must meet setbacks for a principal structure in Table 17.202.030.

6. Recreational vehicles, motor vehicles, travel trailers and other forms of towable structures shall not be used as an accessory dwelling unit.

7. An accessory dwelling unit may not be used as a short-term rental.

Commented [DR15]: Delete per DLCDCD Guidelines, not clear and objective. SB 1051.

Commented [DR16]: Delete per DLCDCD Guidelines, not clear and objective. SB 1051.

8. In addition to the number of parking spaces required for the primary residence, as established in DMC 17.304.040(C), one off-street parking space pursuant to DMC 17.304.040 must be provided for each bedroom of the accessory dwelling unit. Units without a separate bedroom are considered one bedroom. Parking spaces shall be paved and/or covered. [Ord. 572-2021 § 1 (Exh. B); Ord. 563-2018 § 1 (Exh. A)].

Commented [DR17]: Delete off-street parking requirement.. SB 1051 and HB 2001.

Add standard for connection of utilities to primary structure, or alternative for separate services.

Commented [DR18]: See DLCD Guidance Document.

What about SDC charges? Reduce of ADUs?

What about off-street parking, don't require?

Should lot coverage be increased for an ADU?

**Chapter 17.304
PARKING AND LOADING**

17.304.040 Automobile parking standards.

[...]

C. Off-Street Automobile Parking Space Standards. The minimum number of required off-street vehicle parking spaces shall be determined in accordance with one of the following procedures:

1. Pursuant to the standards in Table 17.304.040(C); or
2. Pursuant to a parking demand analysis prepared by a qualified professional and subject to review through a Type II or Type III procedure, consistent with the application process. Such demand analysis must consider average parking demands for existing and proposed uses on the subject site, opportunities for shared parking (parking agreement) with other uses in the vicinity, and public parking, including on-street parking, in the vicinity; or
3. Where a use is not specifically listed in Table 17.304.040(C), parking requirements shall be determined by finding that a use is similar to one of those listed in Table 17.304.040(C) in terms of parking demand, or by estimating parking needs individually using the demand analysis option described in subsection (C)(2) of this section.

Table 17.304.040(C) Minimum Automobile Parking Spaces Required by Use

Residential

A. One- and two-family dwellings, including manufactured homes	2 spaces per dwelling unit
B. Multifamily dwellings	1 1/2 spaces per dwelling unit
C. Boarding house, lodging house, or rooming house	1 space per 2 guest accommodations
D. Fraternity, sorority, and group living units	1 space per 2 sleeping accommodations
E. Dormitory	1 space per sleeping room

Commented [DR19]: Change to Duplex dwelling.

Commented [DR20]: Change, 1 space per Duplex dwelling. SB 2001.

Public Land Use

A. Convalescent hospital, nursing home, sanitarium, rest home, home for the aged	1 space per 2 beds
B. Hospital	3 spaces per 2 beds
C. Library, reading room	1 space per 300 s.f.
D. Preschool nursery, kindergarten	2 spaces per classroom
E. Elementary or junior high school	2 spaces per classroom
F. High school	5 spaces per classroom
G. Other places of public assembly, including churches	1 space per 4 seats or 8 feet of bench length

Commercial Land Use

A. Movie theater, theater	1 space per 4 seats or 8 feet of bench length
B. Amusement and recreational services	1 space per 250 s.f. of gross floor area
C. Retail store	1 space per 300 s.f. of gross floor area
D. Service or repair shop, retail store handling exclusively bulky merchandise such as automobiles and furniture	1 space per 900 s.f. of gross floor area
E. Banks and other financial institutions	1 space per 300 s.f. of gross floor area
F. Offices and services	1 space per 300 s.f. of gross floor area
G. Medical or dental office	1 space per 300 s.f. of gross floor area
H. Mortuary	6 spaces for each room used as a parlor or chapel
I. Motel or hotel	1 space per guest room
J. Bed and breakfast inn	2 spaces for owner/manager, plus 1 space per guest room
K. Restaurant	1 space per 250 s.f. of gross floor area

Industrial Land Use

A. Manufacturing establishment	1 space per 0.75 employees plus 1 space per 2,500 s.f. of gross floor area
B. Wholesale establishment, warehouse, rail or truck freight terminal	1 space per 2,000 s.f. of gross floor or storage area

D. Preferential Carpool/Vanpool Parking. Parking lots for commercial and office uses that have designated employee parking and more than 20 parking spaces shall provide at least 10 percent of the employee parking spaces (with a minimum of one space) as preferential long-term carpool and vanpool parking spaces. Preferential carpool and vanpool parking spaces shall be closer to the entrances of the building than other parking spaces, with the exception of ADA accessible parking spaces. [Ord. 542-2015 § 3 (Exh. B); Ord. 534-2014 § 1 (Exh. A); Ord. 521-2013 § 3 (Exh. A)].

17.304.050 Bicycle parking standards.

At a minimum, required bicycle parking shall be consistent with the following standards and guidelines:

A. Location. All bicycle parking shall be within 100 feet from a building entrance; located within a well-lighted area; and clearly visible from the building entrance.

B. Access. Bicycle parking shall be convenient and easy to find; an access aisle of at least five feet in width shall be provided to each bicycle parking facility. Where necessary, a sign shall be used to direct users to the parking facility.

C. Bicycle Parking Spaces. The bicycle parking standards in Table 17.304.050(C) shall apply and the installation of bicycle parking spaces shall correspond with the required installation of new, or additional, vehicle parking improvements; except that the number of required bicycle parking spaces may be reduced following the same procedure as for automobile parking spaces under DMC 17.304.040(C).

Table 17.304.050(C) Minimum Bicycle Parking Spaces Required by Use

Type of Use	Minimum Number of Bicycle Spaces
Single-family residential or duplex	0
Multifamily	1 space per 2 dwelling units
Hotel, motel	1 space per 10 guest rooms
Club, lodge	1 space per 20 vehicle spaces
Hospital, nursing facility	1 space per 20 vehicle spaces
Church, auditorium	1 space per 20 vehicle spaces
Elementary, middle school, junior high	8 spaces per classroom
High school	2 spaces per classroom
Retail, office, government offices	1 space per 10 vehicle spaces
Bowling alley, rink, community center	1 space per 10 vehicle spaces
Eating and drinking establishment	1 space per 10 vehicle spaces
Service retail, retail involving bulky merchandise (furniture, lumber)	1 space per 30 vehicle spaces
Industrial, warehousing	1 space per 30 vehicle spaces
Transit centers and park-and-ride lots	8 spaces
Other uses	Requirements for uses not identified shall be determined by the city based upon requirements of comparable uses in this section.

Chapter 17.305
PUBLIC IMPROVEMENTS AND UTILITIES

17.305.020 Applicability.

Standards for the provision and utilization of public facilities or services available within the city of Dundee shall apply to all land developments in accordance with Table 17.305.020. No development permit shall be approved unless the following improvements are provided for prior to occupancy or operation, or unless future provision is assured in accordance with subsection (B) of this section.

Table 17.305.020 Applicability of Public Improvement Requirements

Land Use Activity	Fire Hydrant	Street Improvement	Water Hookup	Sewer Hookup	Storm Drain	Street Lights	Bike Lanes*	Sidewalks
Single-Family Home or Duplex	No*	C-2	Yes	Yes	Yes	No	No	C-2
Multifamily Dwelling	C-1	Yes	Yes	Yes	Yes	Yes	Yes (4+ units)	Yes
New Commercial Building	C-1	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Commercial Expansion	C-1	C-3	Yes	Yes	Yes	Yes	No	C-3
New Industrial Building	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Industrial Expansion	C-1	C-3	Yes	Yes	Yes	Yes	No	C-3
Partition, Subdivision, PUD, Manufactured Dwelling, or Mobile Home Park	C-1	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Commented [DR21]: Change to Dwelling.

Legend: No = Not required. *Fire suppression sprinkler system may be required where hydrant standard not met. **Where required by the TSP. Yes = Required C = Conditional, as noted:

C-1. Fire Hydrants for Commercial, Industrial Expansions, or Multifamily Uses. One or more fire hydrants are required as per the Uniform Building Code and Uniform Fire Code or if adequate fire flows are not available to the site. If the existing water lines are insufficient to provide adequate fire flows, water lines shall be upgraded to provide sufficient capacity.

C-2. Street Improvements for Single-Family Dwellings. New single-family dwellings, which require a street extension, must provide street improvements to city street standards. For new single-family homes on unimproved rights-of-way, a sidewalk, landscaping strip, curb, gutter, and a minimum width of 20 feet of street paving shall be required. The paving shall comply with city public works standards and begin at the end of the existing street improvement and extend to the farthest point on the property fronting the right-of-way. For new single-family dwellings or significant additions to or remodels of single-family dwellings (as defined in Chapter 17.501 DMC) on improved rights-of-way, sidewalks, curbs and planter strips are required per DMC 17.305.030(H)(3). A sidewalk deferral may be granted by the city administrator and city engineer where they determine that sidewalk improvements will be constructed

Commented [DR22]: Add Duplex dwelling.

Commented [DR23]: Change to dwelling and add Duplex dwelling.

Commented [DR24]: Add duplex dwelling.

through a larger project in the future. Significant addition or remodel means the valuation of improvements to an existing structure equal to or exceeding 25 percent of the assessed value of the existing improvements on the site.

C-3. Street Improvements for Commercial or Industrial Expansions. Lots fronting on county roads must obtain access permits from the Yamhill County public works department. The city will require improvement to full city standards when the use meets any of the following criteria:

- a. The expanded use generates an average of 100+ trips per day as documented in the Trip Generation Manual of the Institute of Transportation Engineers or other qualified source;
- b. The expanded use includes at least weekly shipping and delivery trips by vehicles over 20,000 pounds gross vehicle weight; or
- c. The subject use expands by at least 25 percent.

A. Public Works and Engineering Design Standards. The design of all improvements within existing and proposed rights-of-way and easements, all improvements to be maintained by the city, and all improvements for which city approval is required shall comply with the requirements of the most recently adopted public works design standards of the city of Dundee. Construction of all public streets, sidewalks, and other public utilities shall comply with the minimum requirements of the most recently adopted public works construction standards of the city of Dundee.

B. City Approval of Public Improvements Required. No building permit may be issued until all required public facility improvements are in place and approved by the city engineer, or are otherwise bonded for in a manner approved by the review authority, in conformance with the provisions of this code and the public works design standards. [Ord. 542-2015 § 3 (Exh. B); Ord. 521-2013 § 3 (Exh. A)].

17.305.030 Street standards.

[...]

Q. Private Streets. Private streets shall only be allowed where the applicable criteria of Chapter 17.301 DMC are satisfied, and shall comply with the following:

1. Private streets shall have a minimum easement width of 25 feet and a minimum paved or curbed width of 20 feet.

2. Unless otherwise specified in the public works design standards manual, all private streets serving four or more dwelling units shall be constructed to the same pavement depth specifications required for public streets. Provision for the maintenance of the street shall be provided in the form of a maintenance agreement, homeowners association, or other instrument acceptable to the city attorney.

3. A turnaround shall be required for any private residential street that has only one outlet and that exceeds 150 feet in length, or which serves more than two residences. Nonresidential private streets serving more than one ownership, if in excess of 200 feet in length and having only one outlet, shall provide a turnaround. Turnarounds for private streets shall be circular with a minimum paved radius of 35 feet.

Commented [DR25]: Change to dwellings.

4. The city may require provision for the conversion of a private street to a public street, and/or the dedication and future extension of a public street connecting to a private street, consistent with the city of Dundee transportation system plan and any adopted local street network plan.

Chapter 17.306 SIGNS

17.306.030 Development standards.

A. Wall Signs.

2. Residential Zones.

a. The basic area allowance for wall signs is as follows:

- i. Single-family ~~and two-family (duplex)~~ dwelling: the total sign area shall not exceed six square feet.
- ii. Multiple-family dwelling: the total sign area shall not exceed 24 square feet.
- iii. Nonresidential uses: the total sign area shall not exceed one square foot for each foot of building frontage, not to exceed a maximum total area of 100 square feet.

b. Each lot may have multiple signs. The total aggregated sign area shall not exceed the allowances in subsection (A)(2)(a) of this section.

c. The sign shall not be a roof sign.

d. An exterior window sign shall be considered a wall sign for the purposes of this code.

B. Freestanding Signs.

2. Residential Zones.

a. The basic area allowance for freestanding signs is as follows:

- i. Single-family dwelling, ~~two-family (duplex)~~ dwelling, and vacant lots: the total sign area shall not exceed six square feet.
- ii. Multiple-family dwelling: the total sign area shall not exceed 30 square feet.
- iii. Nonresidential uses: the total sign area shall not exceed 50 square feet.
- iv. Monument sign for subdivisions: the monument sign area shall not exceed 30 square feet. Monument signs are permitted as described in subsection (B)(2)(f) of this section.

Commented [DR26]: Delete two-family and keep duplex.

Commented [DR27]: Delete two-family and keep duplex.

- b. One sign shall be permitted for each lot frontage.
- c. The height of the sign shall not exceed six feet, measured from the ground to the top of the sign face.
- d. The sign may be located in any yard.
- e. No portion of a freestanding sign shall be in, or project over, a public right-of-way.
- f. In addition to the allowance for freestanding signs in residential zones, one monument sign may be permitted at each street entrance of a residential subdivision that comprises 20 or more lots. The height of the additional sign may not exceed a height of six feet. The additional sign may be located in any yard.

Chapter 17.402
SITE DEVELOPMENT REVIEW

17.402.020 Applicability and exemptions.

Site development review approval is required for new development, changes of use resulting in increased vehicle traffic or demand for parking, additions and remodels, and to expand a nonconforming use or development. Except as specified by a condition of approval on a prior city decision, or as required for uses subject to conditional use permit approval, site development review is not required for the following:

- A. Change in occupancy from one type of land use to a different land use resulting in no increase in vehicle traffic or demand for parking;
- B. Single-family detached dwelling (including manufactured home on its own lot);
- C. Duplex;
- D. Home occupation;
- E. Accessory structures that don't require a building permit, and accessory parking;
- F. Public improvements required by city standards or as stipulated by a condition of land use approval (e.g., transportation facilities and improvements, parks, trails, utilities, and similar improvements), except where a condition of approval requires site development review;
- G. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair. [Ord. 521-2013 § 3 (Exh. A)].

Chapter 17.403
LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS

Add section on Middle housing (Duplex) land division

Commented [DR28]: Add land division to comply with SB 458.

17.501.020 Definitions.

“Accessory dwelling unit” means an interior, attached, or detached secondary dwelling unit that is subordinate to a single-family dwelling unit.

“Bed and breakfast establishment” means a structure designed and occupied as a single-family residence in which lodging rooms plus a morning meal are provided on a daily or weekly basis. A bed and breakfast structure must be owner or manager occupied.

Commented [DR29]: Change to dwelling.

Duplex. See “Dwelling, two-family.”

“Dwelling, single-family attached” means a two-family dwelling so designed that each individual dwelling unit is located upon a separate lot or parcel.

“Dwelling, two-family (duplex)” means a detached building containing two dwelling units designed exclusively for occupancy by two families living independently of each other.

Commented [DR30]: Delete two-family.

**“Dwelling, zero side yard” means a dwelling unit constructed so that at least one wall of the dwelling is constructed at a side lot line. “Zero side yard dwellings” include single-family attached dwellings, townhouse dwellings, and single-family detached dwellings constructed with one wall at a side property line. It excludes condominiums.

Commented [DR31]: Delete

“Family” means an individual or two or more persons related by blood or marriage or a group of not more than five persons who need not be related by blood or marriage living together in a dwelling unit. “Family” includes a group of individuals with disabilities living as a single housekeeping unit.

Title 8 Health and Safety

Chapter 8.28

NOISE

8.28.020 Unreasonable noise prohibited.

C. The following specific acts are declared to be unreasonable noise per se, and constitute violations:

1. Unreasonable Noises. The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

2. Vehicle Horns, Signaling Devices, and Similar Devices. The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any

public space of the city, for more than 10 consecutive seconds without lawful communicative purpose. The sounding of any horn, signaling device, or other similar device as a danger warning is exempt from this prohibition.

3. Nonemergency Signaling Devices. Sounding or permitting sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for nonemergency purposes, from any place for more than 10 consecutive seconds in any hourly period.

4. Emergency Signaling Devices. The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided below:

a. Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test cycle time exceed two minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.

b. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm shall terminate within 15 minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this section.

5. Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passersby, or is plainly audible at a distance of 50 feet from the source of the sound by any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise-sensitive areas, including multifamily or single-family dwellings.

Commented [DR32]: Add Duplex dwelling.

6. Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices. The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:

a. Within or adjacent to residential or noise-sensitive areas;

b. Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous. This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the city.

7. Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, or singing in residential or noise-sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This subsection is to be applied only to those situations where the disturbance is

not a result of the speaker's communicative purpose, if one is present, but due to the volume, duration, location, timing or other effects of speech.

8. Animals and Birds. Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird.

9. Loading or Unloading Merchandise, Materials, and Equipment. The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

10. Noise-Sensitive Areas – Schools, Churches, Hospitals, and Similar Institutions. The creation of any unreasonably loud and raucous noise adjacent to any noise-sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided, that conspicuous signs delineating the boundaries of the noise-sensitive area are displayed in the streets surrounding the noise-sensitive area.

11. Commercial Establishments Adjacent to Residential Property. Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five feet from any residential property. [Ord. 522-2013 § 2 (Exh. A)].

8.28.040 Unlawful noise levels.

B. For the purposes of this section, "residential" means an area of single-family or multifamily dwellings where businesses may or may not be conducted in such dwellings and may include areas containing accommodations for transients such as motels, hotels and residential areas with limited office development. It may also include educational facilities, hospitals, nursing homes, churches and similar institutions.

Commented [DR33]: Add Duplex dwelling.