



Memorandum

Date: July 24, 2020

To: West Linn Planning Commission

From: Darren Wyss, Acting Planning Manager

Subject: Agenda Item 5: HB2001/HB2003 Rulemaking Comment Period

The West Linn City Council was provided an update on the rulemaking process for House Bills 2001 (HB2001) and 2003 (HB2003) at its July 20, 2020 meeting. The agenda packet is attached. At the meeting, Council directed staff to seek comment from the Planning Commission on the rulemaking advisory committee's recommendations and for staff to bring any comments back in September 2020 for Council to consider when it puts together testimony to forward to the Department of Land Conservation and Development.

The Commission's August 5th meeting will be a chance to ask some general questions about the rulemaking process and information in the agenda packet. Staff is targeting the Commission's September 2, 2020 meeting, which will allow time to get acquainted with the rulemaking advisory committee's recommendations, for a follow-up discussion and finding consensus on any comments to send to City Council.

As discussed at the Commission's July 1, 2020 meeting, the City has secured grant funding from the Department of Land Conservation and Development (DLCD) to begin work towards meeting the requirements put in place for HB2001/HB2003. The rulemaking advisory committee's work will directly influence the products produced with the grant funds.

If you have questions about the work session or materials, please feel free to email or call me at dwyss@westlinnoregon.gov or 503-742-6064. As always, please submit questions before the meeting to increase the efficiency and effectiveness of the discussion as it allows staff to prepare materials and distribute them for your consideration. Thanks and hope to see everyone on the 5th.

Agenda Bill 2020-07-20-01

Date Prepared: July 16, 2020
For Meeting Date: July 20, 2020
To: Russ Axelrod, Mayor
West Linn City Council
From: John R. Williams, Interim City Manager *JRW*
Subject: HB 2001/2003 Rulemaking Update

Purpose

Council update on the state's rulemaking to implement the Middle Housing laws created in House Bills 2001 and 2003.

Question(s) for Council:

Does Council have specific direction to staff on involvement in rulemaking efforts related to HB 2001 and 2003? Does Council wish to submit testimony to the Rulemaking Advisory Committee, or Land Conservation and Development Commission (LCDC) in the fall?

Background & Discussion:

Council has previously received many updates on the requirements and timelines of these two bills. Statewide rulemaking committees continue to work on the administrative rules and model codes required to implement the bills. Recently Councilors endorsed a comment letter (Attachment 1) spearheaded by LOC that urged the Rulemaking Advisory Committee to allow more flexibility to local jurisdictions, perhaps through an approach that give particular consideration to equity and racial justice issues. Council has also supported West Linn's successful efforts to receive grant funding for required code work to implement the new state rules.

Final drafts for the materials that would apply to West Linn are expected in late August/Early September, with an initial LCDC hearing in September and adoption in November. The current draft model codes and minimum compliance standards are available beginning on page 92 of the [July 14 RAC packet](#). Due to their length and complexity, and the number of items on your July 20 agenda, it is not staff's intention to cover these in detail at the meeting. Rather this report highlights several issues that are the subject of strong local government scrutiny. Credit goes to Clackamas County staff Martha Fritzie and Chris Storey for parts of this summary, which I have adapted from their June 30 staff report to the Clackamas County Board of Commissioners.

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

Staff from many jurisdictions involved in the rulemaking have been consistently asking for the minimum compliance provisions to allow cities and counties more flexibility so long as their approaches comply with HB 2001. This has been the direction to date from the West Linn City Council and Planning Commission. The need for flexibility has been requested so jurisdictions

can consider local context when developing zoning provisions, and so they can work with their community members to consider alternatives in order to find the best approach to provide more housing choice for current and future community members.

This topic and the ones that follow have strong connections to social justice and racial equity. Oregon has a long history of exclusion and racism in housing policy and many advocates are calling for increased consideration of these topics as rules are formed. There is a concern that jurisdictions will use a variety of reasons to continue policies of exclusion in housing or concentration of housing types. This subject connects directly to your town hall meeting with Michael Fesser, in which participants spoke from the heart about the need for West Linn to look at owning actions far broader than simply police policies and procedures. We have an opportunity to be just as much of a leader in housing as the Council wishes to be in policing.

- **Parking.** Throughout all the meetings, some of the liveliest discussions have been around parking and transportation. The amount of off-street parking that should be required has been a controversial issue in the rulemaking work. Despite a fair amount of push-back from both RAC and TAC members, DLCD has proposed the following parking requirements:

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

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

- **How "areas" are to be defined.** With respect to the "Large and Metro Cities" rulemaking, this is, by far, the most controversial and difficult topic to address. Because HB2001 specifically states that duplexes must be allowed on every lot zoned for a single-family dwelling, but that the other middle housing types (triplexes, quadplexes, etc) must be allowed "in areas" zoned for a single-family dwelling, the issue becomes how a jurisdiction would and should define the "areas" where these types of housing will be allowed.

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

1. The "whittle down" method starts with an assumption that all the middle housing types are allowed in all residential areas zoned for single-family dwellings and then

eliminates areas from eligibility if they are not “well-suited” for middle housing development. As currently drafted, the only justifications for “whittling down” the areas are based on specific wildlife habitat and other already-protected areas or areas with infrastructure deficiencies that cannot be remedied. DLCD staff has noted that under this approach, there will be additional opportunities (this language has not been drafted yet) to designate other areas to be “whittled away”, as long as there is “robust justification” for restricting middle housing types in those areas. At this point, we are uncertain what sort of “robust justification” would be required and, absent a realistic opportunity to further “whittle areas” to those that are most appropriate to allow middle housing, this method may not meet the intent of HB2001, which clearly implies that not all single-family lots are appropriate for all the middle housing types.

2. The “balloon” method would determine areas that are well-suited for middle housing development, considering locational factors such as proximity to centers and services, other more dense housing development, transit lines/stations or certain classifications of roads. This method would likely result in a more limited set of “areas” in which the other middle housing types must be allowed, which raises some equity concerns, as it is clear that the intent of HB2001 is to provide more housing choice in historically exclusive residential areas.

It appears that DLCD’s preference is the “whittle down” method. This was primarily motivated by a conversation that looked at the approaches through an equity lens, and the observation from a RAC member that prior city-specific efforts using the balloon method were not successful in increasing middle housing. The LOC letter that West Linn signed on to (Attachment 1) expressed concerns with the whittle down method. Staff will continue to advocate for more flexibility with whatever method ends up being used to define “areas,” but the ability of the City to define these areas in our own code amendments will be limited by what is ultimately adopted by LCDC.

- **Infrastructure limitations and the adoption timeline.** The process for receiving a delay in the adoption of the zoning changes due to infrastructure limitations will be laid out in the Infrastructure Based Time Extension Rule, or “IBTER.” The IBTER rulemaking process will conclude in August and is intended to capture unique impacts attributable solely to up-zoning and not more general infrastructure issues. The remaining opportunity for changes to the draft rules is limited, as the adoption timeline is nearing completion, and the statute does not grant much space for the proposed rules to be other than what is being proposed. A few notes:
 - The IBTER process is a voluntary decision by a local jurisdiction to request a delay in up-zoning single family residential in a particular area as required to allow the middle housing element set forth in the statute. The city could elect to pursue an IBTER by filing an application by June 30, 2021. Such a request would need to be done in close coordination with relevant services providers if not the City.
 - The IBTER application will be based on a set of rules that are still in the process of being developed. A key theme running through them is that the infrastructure impact that would justify a time extension cannot be a pre-existing condition that is acceptable for single family housing. It must manifest due to the increased demand on that infrastructure due to the increased density of housing by December 31, 2023.
 - There are proposed baselines for the rate of growth than can be assumed regarding the infrastructure impact, and the application must include a proposed plan on how to

remedy that deficiency. The application is discretionary, and can be rejected by the LCDC.

The IBTER process will conclude in the next 60 days. As it has proceeded, it's becoming increasingly clear that the statute does not grant much space for the proposed rules to be other than what is being proposed. Therefore, staff recommends Council focus on the Large and Metro Cities Model Code and Minimum Requirements described above.

Expected Adoption Schedule (LCDC)

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

Staff Recommendation:

Of all the many issues being considered at the state level right now, staff has attempted to highlight ones that may be of most interest to West Linn. Staff recommends Council provide direction to staff on crafting comment letters, for review and approval at August 3, 2020 City Council meeting or at a subsequent meeting if more discussion is preferred.

Attachments:

1. 7/10/20 LOC-coordinated letter to DLCD staff/Rulemaking Advisory Committee
2. 7/9/20 DLCD staff report providing overview of all rulemaking activities underway (full set of attachments and many other materials available at [LCDC July meeting page](#)).
3. HB 2001/2003 Frequently Asked Questions document (produced by DLCD)

Ethan Stuckmayer
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Salem, OR 97301



July 10, 2020

RE: HB 2001 Rulemaking and Middle Housing Minimum Compliance Standards

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

The current “whittle away” approach:

- Does not expressly allow cities to define different areas within their jurisdiction in which middle housing can be regulated in different ways, except for excluding specific geographic areas through the “whittle away” approach.
- Fails to provide a path for cities to retain middle housing strategies that are already working and have already produced middle housing.¹ Instead, the minimum compliance standards specify one approach statewide.
- Prevents cities from responding to context and community goals, particularly when combined with the minimum compliance standards currently proposed. Specifically, the current minimum compliance standards:
 - Remove flexibility and severely limit cities’ ability to use tools such as minimum lot size, maximum density, planned unit developments, and unit maximums per lot. The proposed minimum compliance standards prohibit cities from requiring larger minimum lot sizes for triplexes or quadplexes than for detached single family dwellings. This restriction discourages cities from proposing smaller minimum lot sizes for single family detached dwellings that would make home ownership more affordable.

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

- Do not allow a jurisdiction to adjust minimum parking requirements to deal with area-specific conditions, such as housing units with greater parking demand or situations where on-street parking is not available.
- Rely on a flawed or incomplete feasibility analysis that:
 - Only analyzes vacant lots (when most middle housing in existing neighborhoods will involve redevelopment or adding units to sites with existing housing).
 - Tests three different FAR scenarios that assume low maximum floor-area-ratios, which have since been revised in the draft, and contemplates a limited range of development scenarios when combined with height and other standards.

Given the need for additional flexibility, the LOC suggests a different approach to defining “areas” and drafting minimum compliance administrative rules for jurisdictions that will be approving their own development codes. The approach can be combined with the “whittle away” approach as proposed by DLCDC in some cases as discussed below, and would set expectations for jurisdictions’ performance while allowing cities a variety of ways to meet those performance measures. The basic components of the approach are:

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

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

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

The LOC and individual city representatives are eager to work with DLCD staff and the Land Conservation and Development Commission to craft an approach that faithfully implements HB 2001, significantly increases middle housing opportunities and allows cities the flexibility to consider community history, public engagement and local context.

Sincerely,

Ariel Nelson, on behalf of the League of Oregon Cities

City of Albany

City of Beaverton

City of Eugene

City of Hillsboro

City of McMinnville

City of Salem

City of Springfield

City of West Linn

City of Wilsonville





July 9, 2020

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Gordon Howard, Community Services Division Manager
Ethan Stuckmayer, Lead Housing Planner
Samuel Garcia, Housing Planner



SUBJECT: **Agenda Item 5, July 23-24, 2020, LCDC Meeting**

HOUSE BILL 2001 AND HOUSE BILL 2003 - UPDATE ON IMPLEMENTATION OF HOUSING LEGISLATION

I. AGENDA ITEM SUMMARY

Purpose. This agenda item consists of a summary and update of actions the Department of Land Conservation and Development (DLCD or department) has taken to implement House Bill 2001 (HB 2001) and House Bill 2003 (HB 2003) over the last few months.

Outcome. The purpose of this agenda item is to provide an update on the implementation of House Bill 2001 and House Bill 2003. The commission is not being asked to take any rulemaking or other action on this agenda item.

II. BACKGROUND

In 2019, the Oregon Legislature passed House Bill 2001 and House Bill 2003. These bills were intended to address the statewide housing supply shortage and affordability crisis. Governor Brown signed these two bills into law on August 6, 2019.

Defined as “middle housing”, HB 2001 provides for duplexes as an option in areas zoned for single-family residential development for cities with population above 10,000 and all cities in the Portland Metropolitan Area with population greater than 1,000 and urban portions of Metro counties. Cities between 10,000 and 25,000 population must allow a duplex on all lots or parcels where single-family detached residences are currently allowed by city zoning. Cities greater than 25,000 population and the affected Portland Metropolitan Area jurisdictions must, in addition to the duplex requirement, allow triplexes, quadplexes, townhomes, and cottage clusters in areas zoned for single-family residential development. The bill has various other provisions that modify or are peripheral to these basic requirements.

HB 2003 has three key components related to defining need and providing a strategy for housing production. There are various other provisions that are peripheral to refine these components.

First, House Bill 2003 directs Oregon Housing Community Services (OHCS) and DLCD to develop a methodology and conduct a Regional Housing Needs Analysis (RHNA) for different regions of the state. DLCD is called to report on the feasibility of implementing RHNAs to the Oregon Legislature by March 1, 2021.

Second, House Bill 2003 requires a city outside of the Portland Metro Area Urban Growth Boundary (UGB) with a population of 10,000 or greater to update its housing needs analysis once every eight years. A city with a population of 10,000 or greater within the Portland Metro Area UGB must update its housing needs analysis once every six years. LCDC delegated the authority to set that schedule to Director Rue last fall.

Third, House Bill 2003 requires cities over 10,000 or inside the Portland Area UGB to approve a housing production strategy (HPS) after completion of the housing needs analysis. Housing Production Strategies must identify a plan to measures to promote construction of needed and affordable housing units at the local level.

The two bills authorize and require the department and commission to take a series of measures and actions to implement the statutory provisions. At this meeting (July, 2020), the commission is also asked to consider final adoption of administrative rules for medium cities duplex requirements in HB 2001, and is also holding a first public hearing on rules for an infrastructure-based time extension request (IBTER) that cities are authorized to file also under HB 2001. The commission will hold a second and final hearing on IBTER rules at a special meeting on August 5. At its September and November meetings, the staff plans to submit recommended rules for the larger cities under HB 2001 and the rules for Housing Production Strategies to implement HB 2003.

III. IMPLEMENTATION MEASURES

A. RULEMAKING ADVISORY COMMITTEE

The Rulemaking Advisory Committee (RAC) appointed by the commission to advise on rulemaking to implement HB 2001 and HB 2003 met for its sixth meeting on June 9. The primary objectives of this meeting were to gather final RAC member feedback on the Infrastructure-Based Time Extension Request (IBTER) Oregon Administrative Rules (in a new Division 46) and to present two approaches to defining “in areas” for the purposes of allowing middle housing in large and metro cities and counties. The memorandum describing the approaches to defining “in areas” is included as Attachment A.

A summary of key rule elements that RAC members discussed follows.

Model Code

DLCD staff and the Angelo Planning Group consultant team are collaboratively preparing the Model Code. Department staff presented Part 1, 2, and 3 of the Large and Metro Cities Middle Housing Model Code at the sixth RAC meeting on June 9¹. Department staff will incorporate the comments, suggestions, and questions posed by the Technical Advisory Committee into a revised draft presented to the RAC at their eighth meeting on July 14.

Infrastructure-Based Time Extension Request

At their meeting on June 9, RAC members were provided an update on progress of the Infrastructure-Based Time Extension Request (IBTER) Rule associated with HB 2001. RAC members offered insight on clarifying the parameters around the justification of an IBTER, especially in instances where single-family detached dwellings continue to be permitted.

Housing Production Strategies

At the June 9 meeting, department staff gave the RAC an update summarizing the discussion of the fourth HPS Technical Advisory Committee. RAC discussion centered on advancing minimum compliance via guidance in the Housing Production Strategy Reports. Members were in general agreement regarding elements of the Housing Production Strategy Report, but also wanted cities to further report and reflect on their efforts to affirmatively further fair housing for protected classes considered in Oregon and Federal Fair Housing Law.

Department staff and RAC members discussed establishing a “statutory pathway” using fair housing laws, as well as language found in Goal 10 to include discussion and action by cities to address and further fair housing for protected classes as part of a HPS. RAC members discussed requiring cities to address the following “fair housing” topics in an HPS: distribution of homelessness resources; locating housing around transportation services and neighborhood amenities; wealth creation through homeownership opportunities; and efforts to reduce housing discrimination. The RAC challenged department staff and the HPSTAC to lean on the language of Goal 10 – Housing and existing federal and state laws as the basis for asking cities to respond to five specific fair and equitable housing questions. These questions are described in more detail as part of the HPSTAC meeting summary section below.

In addition, RAC members discussed standards for consistent reporting, enforcement, and engagement as part the HPS program. Members of the RAC recommended mid-reporting requirements to better track HPS progress on a more continuous basis. This

¹ Four parts of Large and Metro Cities Middle Housing Model Code include Part 1: Purpose, Applicability, and Definitions, Part 2: Triplex and Quadplexes, Part 3: Townhomes, and Part 4: Cottage Clusters.

would occur at the 3- or 4-year mark after a city adopted its HPS, and would center on the annual report of units permitted and produced that cities must submit to DLCD as a result of a 2018 Legislative bill (House Bill 4006). RAC members recommended having robust engagement requirements for a city preparing and adopting a HPS, engaging both housing producers (i.e., developers, infrastructure bureaus) and housing consumers (i.e., renters, owners, historically marginalized community members).

Future meetings of this HPS Technical Advisory Committee will center on finalizing minimum compliance and guidance requirements for the Housing Production Strategy report, finalizing annual and mid-reporting requirements for cities, and defining a methodology for a progression of enforcement measures. The enforcement measures are those commissioners can use to review and hold cities accountable to when they are unable to produce or meet their housing supply needs. With a focus on implementation, Section 6 of HB 2003, now codified as ORS 197.293, directs the commission to adopt a methodology for such review and enforcement measures.

Next Steps

The full RAC will next meet on July 14. The primary objectives of this meeting are to 1) review the Large and Metro Cities and Counties Model Code and 2) identify Housing Production Strategy Report review and enforcement requirements.

B. TECHNICAL ADVISORY COMMITTEES

To meet deadlines and to bring in technical experts on specific matters, the rulemaking effort relies on three Technical Advisory Committees in addition to the full Rulemaking Advisory Committee. The Technical Advisory Committees are an extension of the Rulemaking Advisory Committees, populated with individuals with additional professional and lived experience expertise and also are advisory to the department. The Technical Advisory Committees are charged with exploring specific technical aspects of Oregon's housing legislation in order to develop a set of administrative rules to implement HB 2001 and HB 2003.

Updates on the work conducted by each of the three Technical Advisory Committees to date is below.

1. Middle Housing Model Code Technical Advisory Committee (MCTAC)

This committee is organized to help clarify requirements for “medium” (cities with 10,000-25,000 people) and “large” (cities with more than 25,000 people, and counties in the Portland metro area) local governments in the adoption of codes allowing the development of middle housing types as required by House Bill 2001. The work of the committee includes review comment on draft Model Development Code language, and formulating a set of minimum standards that can be used as a basis for determining compliance of development codes submitted to DLCD by cities subject to House Bill 2001. This committee is considering two distinct Model Codes for consideration by the

RAC and LCDC, one for medium cities and one for large cities, as defined in the HB 2001 statutes.

Since February, the MCTAC has met several times to assist department staff and the project team refine concepts, model code standards, and administrative rules for Medium Cities. A summary of this work is included as Agenda Item #6 in the draft rules and model code regarding duplexes.

The MCTAC continues to review draft versions of the large and metro cities and counties model code. At their seventh meeting, department staff presented drafts for parts one through three (of four) of the Model Code including purpose, definitions, applicability, and siting and design standards for triplexes, quadplexes, and townhomes. The project team also presented development feasibility analysis for specific model code language pertaining to triplexes and quadplexes. Part four will encompass siting and design standards for cottage clusters – the project team is working on code concepts and preliminary language.

Additionally, the committee reviewed an updated version of the memorandum that outlines two approaches to defining “areas” where local governments must allow higher level middle housing (all middle housing other than duplexes). Some committee members expressed concern that the two approaches presented were not inclusive of all potential approaches. The RAC-recommended approach – the so-called “whittle” approach starts with an assumption that all single-family zoned areas are suitable for a full range of higher level middle housing types and then exempting more limited areas based upon specific limiting factors. This approach needs further discussion and clarification in order to provide local governments the guidance on which specific areas they could exempt from higher level middle housing in addition to goal-protected and infrastructure-constrained lands.

2. IBTER Technical Advisory Committee (IBTERTAC).

The role of the IBTERTAC is to provide guidance to department staff as it formulates applicable criteria and the process to be followed by local jurisdictions requesting an extension for middle housing development code adoption due to an infrastructure deficiency. The deficiency must relate to transportation, water supply, wastewater, or storm drainage. This committee advises department staff on aspects of the draft rule including but not limited to, 1) how a city might formally request an extension, 2) what qualifies as deficient infrastructure, and 3) in which areas a city may delay adoption of middle housing development code.

The IBTERTAC met for the sixth and final time on May 28, 2020. At this meeting the committee members reviewed the draft IBTER rules and the associated Fiscal and Housing Impacts Statements. A more detailed summary of what was discussed and the rules proposed is highlighted in Agenda Item 7.

Medium Cities are required to submit an IBTER application to the department by December 31, 2020. Large and Metro Cities and Counties are required to submit an IBTER application to the department by June 30, 2021.

3. HPS Technical Advisory Committee (HPSTAC).

The HPSTAC is convened to provide guidance on required components of housing production strategies for local governments.

Committee members are tasked with advising staff on a proposed organizational structure for the Housing Production Strategy (HPS) as required by HB 2003 for cities with a population greater than 10,000. Committee members are asked to work with staff to identify the minimum compliance and guidance criteria related to the major components of the Housing Production Strategy report. The components of a Housing Production Strategy Report that the project team, in conjunction with the committee, have identified are:

Contextualized Housing Needs describes a city's housing needs as identified by the most recently adopted Housing Needs Analysis. Per HB 2003, this section must include other considerations that describe current and future housing needs in the context of population and market trends. Additionally, because HNAs calculate housing need by income group, the analysis often poorly estimates the housing needs of those experiencing homelessness. DLCD staff proposes that cities conduct an analysis of the specific housing needs of the homeless population.

Engagement identifies the process by which the city has engaged, or plans to engage, a diverse set of stakeholders in the development of the Housing Needs Analysis and Housing Production Strategy. This section is separated into two parts 1) engagement of housing consumers and 2) engagement of housing producers. This section requires that a city engage underrepresented communities in the Housing Production Strategy process and must describe how the insights gleaned from this engagement have impacted the housing production strategies the city plans to implement.

Strategies to Meet Future Housing Need outlines the specific tools/actions/policies that the city will implement to facilitate the production of housing. For each strategy, in addition to stating the timeline for adoption and implementation, the city must address how the strategy overcomes patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Achieving Fair and Equitable Housing Outcomes describes the actions taken by a city that further housing opportunity in the city. In this section cities must outline specific or planned practices that link housing to transportation, affirmatively further fair housing,

provide access in opportunity areas,² address the equitable distribution of services, and create opportunities for affordable rental housing and homeownership.

Conclusion narrates the expected outcome of the proposed housing production strategies. This must include an analysis of the opportunities, challenges, and negative externalities that may result from the collective implementation of the strategies proposed. Specifically, this section must include a description of how the city expects to increase housing options for populations that have a disproportionately high need by answering a series of questions.

The HPSTAC held its fourth and fifth meetings on May 18 and June 18, 2020, respectively. During the May 18 meeting, OHCS presented an update on the work to develop the Regional Housing Needs Analysis (RHNA) methodology. HPSTAC members shared their thoughts and concerns about developing an Oregon-specific model of the RHNA, including concerns over the insufficiency of data sources that help address housing needs for various marginalized communities (i.e., homeless, elderly, and those with disabilities). In addition, many members highlighted crucial oversights regarding the need for the Housing Production Strategy to comprehensively incorporate equity and fair housing principles into the current HPS reporting requirements.

After the fourth HPSTAC meeting, DLCD staff held conversations with equity experts within the committee, including members of a newly-formed Fair Housing and Racial Equity Caucus within the Rulemaking Advisory Committee. Commissioner Anyeley Hallova of LCDC, Dr. Marisa Zapata from Portland State Homelessness Research and Action Collaborative (HRAC), Stephanie Jennings from the City of Eugene, Allan Lazo from the Fair Housing Council of Oregon, and Andre Tremoulet from Commonworks Consulting, were also called upon to help further articulate statutory pathways to incorporate racial equity and fair housing requirements into housing production strategy rulemaking. These conversations proved beneficial to the rulemaking process, as by the seventh RAC meeting department staff were able to articulate clear language from Goal 10, Oregon and Federal Fair Housing Law, and HB 2003 to formulate an equity analysis within the HPS report requirements going forward.

Department staff and Commissioner Hallova also created a public, open-sourced, shared Google Doc where planners, practitioners, policymakers, and housing advocates across the State could contribute to a growing list of housing production strategies that jurisdictions can use to address housing needs once their Housing Production Strategy

² “Opportunity Areas”, as defined by Oregon Housing and Community Services (OHCS), are the product of a rating system used to identify census tracts across the State of Oregon that are more likely to have higher access to housing opportunity funds. Opportunity areas are rated on a scale of 0 to 4, with 4 being areas having the highest opportunities. This index takes into account several key variables, such as: 1) poverty rate, 2) labor market engagement index, 3) unemployment rate; and 4) proximity to a high scoring school.

<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=2cb211dbdd3d4cf497d8190283f1402f>

Report is submitted. The ongoing Google Doc can be found in Attachment B. While this document will never truly represent the full list of housing production strategies, the department will publish the list as a resource for cities as they are drafting their Housing Production Strategy Reports. The department will then continually update the list with new strategies as they are developed or proposed by cities.

Department staff have created a table that delineates the requirement and the best practices of a Housing Production Strategy Report vetted by the RAC and HPSTAC. The Housing Production Strategy Report Structure can be found in Attachment C.

At the fifth HPSTAC meeting on June 18, committee members completed more work to finalize the minimum compliance and guidance elements of the Housing Production Strategy Report, as well as introducing jurisdiction reflection questions. Such questions, going forward, would allow cities to qualitatively measure progress on affirmatively furthering fair housing and equitable development for their communities. These questions were:

Location/Transportation. How is the city locating housing and transportation networks so that all residents, including protected classes identified in Federal and Oregon State Fair Housing Law, have equal access to community sites and locations offering education and occupational opportunity?

Fair Housing. How is the city affirmatively furthering fair housing for all resident groups listed under the Federal and Oregon Fair Housing Laws? Affirmatively furthering fair housing means addressing:

- Disproportionate housing needs
- Patterns of integration and segregation
- Racially or ethnically concentrated areas of poverty
- Disparities in access to opportunity

Opportunity Areas. How is the city creating opportunities for marginalized communities of color and low-income communities, to live in opportunity areas with higher scores?

Homelessness/equitable distribution of services. How is the city ensuring that services and shelters to support the homeless population are equitably spread throughout all neighborhoods of your city?

Opportunities for affordable rental housing and homeownership. How is the city creating opportunities for both affordable rental housing and wealth creation via homeownership, especially for communities that have been historically locked out of these opportunities?

With regards to the five questions mentioned above, HPSTAC members asked to further define “opportunity areas” such that it referred to access to services, schools,

and employment. In regards to the “equitable distribution of homelessness services”, Committee members wanted to clarify that this meant removing impediments to homeless services across cities rather than creating inefficiencies in infrastructure through specific distribution methods. As a result, two questions have been updated to read as follows:

Areas of Opportunity. How is the city creating opportunities for communities of color and low-income communities to live in areas of opportunity with greater access to high-performing schools, employment centers, and services?

Homelessness/equitable distribution of services. How is the city ensuring that services and shelters to support the homeless population are equitably distributed?

In addition, there was ongoing work to further articulate the reporting required of cities, and enforcement methods LCDC will have the ability to utilize when cities are unable to reach their housing production strategy unit goals. For future meetings the HPSTAC will revisit how LCDC will enforce deficient HPS progress, most likely through a tiered or point-system approach. The HPSTAC will also discuss what constitutes these tiers, and how LCDC defines them.

4. Regional Housing Needs Analysis (RHNA).

Pursuant to HB 2003, Oregon Housing and Community Services (OHCS) has been charged with developing a RHNA. OHCS has contracted with ECONorthwest, an Oregon-based consulting firm, to help it complete its work. This process seeks to create a prototype that can be used to calculate housing needs by region in order to allocate number of units and housing types to cities within regions. OHCS has already held stakeholder involvement sessions to gather feedback on work completed as part of Phase One, and are now developing a Regional Housing Needs Analysis modeled after methods used in California to complete Phase Two.

OHCS has assembled a stakeholder advisory group to give advice on this work. DLCD staff participate as ex officio members, helping shape development of Phase Two, called the Oregon Method. OHCS presented its findings with a short discussion on Phase One at the May 18 Housing Production Strategy TAC meeting, which resulted in further discussion around the limitations of data sets needed to adequately capture regional housing needs, especially for marginalized communities of color belonging to protected classes identified in fair housing laws. OHCS will be wrapping up its advisory committee for Phase Two soon with the development of their methodological approach, in time for publication of a September 1, 2020 draft. Communications are already underway between OHCS and DLCD staff, to conduct outreach together after this period. OHCS and DLCD respectively have reports on the model and potential benefits due to the legislature on March 1, 2021. Staff from both agencies recommend a joint work session between OHCS Housing Stability Council members later this fall or early 2021.

5. Anti-Displacement and Gentrification Study with Portland State University.

As an additional effort to further community stabilization, equity and fair housing initiatives through the implementation process of HB 2003, DLCD staff have sought out the expertise of Dr. Lisa Bates and Dr. Marisa Zapata at Portland State University. These leading researchers have agreed to provide community stabilization/ anti-displacement strategies to inform HPS data collection and implementation strategies at the local level. Dr. Bates created a foundational body of work for the City of Portland in 2013 titled “Gentrification and Displacement Study: Implementing an Equitable Inclusive Development Strategy in the Context of Gentrification”³, and has agreed to draft a scope of work that will inform anti-displacement and gentrification for HPS rulemaking and as a guidance document for cities preparing their HPS in the future. This work will take place and is expected to be finished before the end of the 2021 fiscal year.

C. SPEAKER’S BUREAU AND COMMUNITY-SPECIFIC OUTREACH

In addition to the DLCD staff-led community conversations held in the early part of 2020, department staff are involved in significant outreach to local governments and other potentially affected and interested parties to discuss the new housing legislation and implementation plans. Recent engagements and Speaker’s Bureau events include:

- Zoom forums in each region of the state prior to the May meeting
- Clackamas and Multnomah County Planners
- Washington County Planners
- Coastal Planners Network
- American Association of Retired Persons
- Urban Lands Institute Northwest
- League of Oregon Cities
- Habitat for Humanity
- Portland African American Leadership Forum
- Confederated Tribes of Grand Ronde
- Homeless Research Action Collaborative

Due to the recent public health emergency, the department has had to postpone many planned engagements with stakeholder groups to a later “virtual” meeting. A planned meeting with the Lane Independent Living Alliance in Lane County was cancelled due to the emergency. Planned engagements and virtual speakers’ bureau events include:

- Homeless Research Action Collaborative

³ In 2013 Dr. Lisa Bates from Portland State University conducted a Gentrification and Displacement study for the City of Portland, outlining 1) indicators of displacement and/or gentrification to look for in developing communities, as well as 2) strategies to help stabilize them.

- Coalition of Communities of Color
- Southern Oregon Realtor Association
- RELU Summer Conference Education Committee
- Town Hall with Representative Prusak (West Linn and Tualatin)

D. PLANNING ASSISTANCE

The Oregon Legislature allocated \$4.5 million to assist cities to implement provisions of HB 2001 and HB 2003 within the 2019-2021 biennium. The appropriation allocated \$3.5 million towards HB 2001 and \$1 million toward HB 2003, resources which DLCD is making available to local governments through the department's grant program. The department received 57 project applications for both HB 2001 and 2003, and awarded grants to 56 of them. These projects will span across 34 cities and two counties throughout the State.

In addition, a procurement process for planning consultants to directly assist local governments with implementation of HB 2001 and HB 2003 is underway. As of early July, DLCD will be working with the following consultants to assist cities with implementation work in the upcoming year.

- 3J Consulting, Inc.
- Angelo Planning Group
- Cascadia Partners
- ECONorthwest
- MIG, Inc.
- Urbsworks, Inc.

House Bill 2001

DLCD will use the allocation to contract with local governments to implement two aspects of HB 2001 to help ensure more housing choice for cities outside of Metro with over 10,000 population, Metro cities with over 1,000 population, and unincorporated, urbanized portions of Metro counties.

Cities have applied for this funding to assist in the formulation and adoption of middle housing development codes. Based on feedback from previous grant cycles, cities had the option to either 1) apply for direct grant funding to hire staff, a consultant, or use other resources; or 2) enter a memorandum of understanding with the department and be assigned a consultant from a list of such consultants that will be under contract with the department.

The \$3.5M allocated via HB 2001 also is available to local jurisdictions who seek to submit an infrastructure-based time extension request application. The funding available for this is limited to only the study and application process of the request and not to be used to actually remedy infrastructure deficiencies.

As of early July, the department had awarded grants to cities for five infrastructure-based time extension requests (IBTER) and 28 Code Assistance projects. The department made awards for all of the grant applications, though some not for the full amount requested. The department is currently completing these grant agreements scoping and kickoff meetings now being scheduled between jurisdictions and DLCD.

House Bill 2003

DLCD was appropriated \$1M to distribute to local governments for the purposes of completing any of the following projects: housing needs analyses (HNAs) which describe a jurisdiction's housing need in detail; housing production strategy (HPS) prototypes, which will be tailored to and inform the HPS structure currently being created during rulemaking; and housing strategy implementation plans (HSIPs), which will describe the work and timeline required to carry out strategies identified in other housing analyses. As written in the bill, DLCD may only grant money to cities with a population greater than 10,000 – the cities that must complete housing needs analyses and housing production strategies under the provisions of HB 2003. Similar to HB 2001, HB 2003 cities also had the option to 1) apply for direct grant funding or 2) be assigned to a pre-approved consultant from DLCD staff.

As of early July, the department has awarded grants for 24 projects related to HB 2003. Only one project was denied from the initial applicant pool, and the department awarded a grant to that city (Happy Valley) for a different project proposal. Department staff have begun finalizing funded grant agreements with scoping and kickoff meetings now being scheduled between jurisdictions and DLCD.

Planning Assistance Update

The department has confirmed final funding, and begun negotiations with cities and consultants. The department anticipates finalizing negotiated agreements by mid-July and finalizing contracts by the end of July, such that Model Code work can begin immediately upon rule adoption. For work that is not contingent upon rule adoption, such as the HNA and Housing Strategy Implementation Plan work in HB 2003, the department is working to finalize these agreements as soon as possible to provide local jurisdictions more time to complete work before the end of the biennium on June 30, 2021.

IV. COMMISSION GUIDANCE

Staff seeks commission guidance particularly on how the department should review Housing Production Strategy Reports and the enforcement measures the department may take on cities who do not sufficiently meet the requirements of the Housing Production Strategy Program.

Housing Production Strategies are required to be adopted on a six- or eight-year cycle. Throughout the HPS rulemaking process, it has become clear that there is justification for cities to complete a midpoint check-in at the three- or four-year mark to report back to the department on progress made towards achieving housing production goals. The department and the TAC are considering ideas on how this check-in can be operationalized including using a survey similar to the one required by HB 4006, some sort of narrative reflection, or a combination of these. The goal of this review is not to reflect only on the number of units permitted and produced each year, but over time, measure trends in the efficacy of a city's Housing Production Strategies in achieving fair and equitable housing outcomes.

As an extension of this reporting and HPS review process, staff would like LCDC guidance on potential enforcement measures the department may take when cities continually or routinely fail to make good faith efforts to progress towards their housing production strategy goals.

HB 2003 states that LCDC should identify cities with a population greater than 10,000 that have not sufficiently achieved needed housing within their jurisdiction or have not sufficiently implemented a housing production strategy. Section 4 of House Bill 2003, offers some guidance on which measures LCDC could use in reviewing HPS sufficiency:

- A) Unmet housing need as described in ORS 197.296(6),
- B) Unmet housing need in proportion to the city's population,
- C) Percentage of households identified as severely rent burdened,
- D) Recent housing development,
- E) Recent adoption of a housing production strategy or implementation of actions therein,
- F) Recent or frequent failure to address the metrics listed in a – e above, or
- G) Other attributes that the commission considers relevant.

Likely, the commission will use a combination of items A – F as the review criteria. Additionally, item G provides the commission the opportunity to add other review criteria. At previous LCDC meetings, the commission has indicated that meeting the housing needs of people experiencing homelessness and achieving fair and equitable housing outcomes are two important factors to considering in the Housing Production Strategy program. To this end, the department and the HPSTAC have worked to include these considerations in the Housing Production Strategy Report requirements. The department is also considering requiring reflections on both of these items in the midpoint check-in process described above.

The department feels that with the addition of these two considerations, the review criteria in A-F above provide a comprehensive and clear outline to determine the sufficiency of a city's Housing Production Strategy.

Discussion Question for Commission: Are there other criteria, outside of what is described above, by which the department should measure the adequacy of a city's Housing Production Strategy. *It is important to note - the goal is not to review a Housing Production Strategy solely by the number of units produced over time. Much of housing development is provided by the private or non-profit market and is out of the direct control of any individual local government. Rather, the review should be based on the adequacy of actions taken by the local government to begin to address any unmet housing need and to facilitate its production.*

Lastly, the department is tasked with determining what enforcement actions they may take on cities that do not routinely or consistently meet the underlying requirements of the Housing Production Strategy program. At the time of staff report publishing, the HPSTAC and department staff have considered using a tier-based enforcement system, such as a point system whereby cities and LCDC are both able to clearly measure their progress or deficiencies. Further, enforcement measures could include incentives, such as opportunities to provide fair housing implementation trainings for staff when goals are met, or consequences, such as the withdrawal of planning assistance funds when housing production goals are not met.

Discussion Question for Commission: How should Housing Production Strategies be enforced? What actions should the department take to ensure that the Housing Production Strategy program is achieving its intended outcomes? How can the department incentivize ongoing engagement and participation in the Housing Production Strategy program?

Recommended Action

While commission guidance is welcome on the points described in this memo, this is not a rulemaking agenda item. Staff will ask the commission to consider rules for adoption as follows:

- Special August LCDC: Second hearing on IBTER rules (HB 2001)
- September LCDC: First hearing Large and Metro City rules (HB 2001); First hearing Housing Production Strategies (HB 2003)
- November LCDC: Second hearing Large and Metro Cities rules (HB 2001); First hearing Housing Production Strategies (HB 2003)

V. **ATTACHMENTS**

- A. **APPROACHES TO DEFINING “IN AREAS” RULEMAKING ADVISORY COMMITTEE MEMORANDUM**
- B. **UPDATED LIST OF HOUSING PRODUCTION STRATEGIES/TOOLS/POLICIES**
- C. **HOUSING PRODUCTION STRATEGY REPORT STRUCTURE**

HB 2001 and HB 2003 Frequently Asked Questions

Updated on March 25, 2020

House Bill 2001

Requirements for Duplexes

Which jurisdictions will be required to allow duplexes?

All Oregon cities with a population of 10,000 or more, unincorporated areas within the Portland Metro boundary that are served by sufficient urban services, and all cities within the Portland Metro boundary with a population of more than 1,000. A list is here: https://www.oregon.gov/lcd/UP/Documents/2019-11-20_CityList_HB2001_HB2003.pdf

Where will they be allowed?

Duplexes must be allowed “on each lot or parcel zoned for residential use that allows for the development of detached single family dwellings.”

What is meant by “a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings”?

A local government that allows single-family dwellings in a residentially zoned lot or parcel must also allow for the development of a duplex. The local government may regulate the siting and design of the duplex so long as the regulations do not, individually or cumulatively, deter the development of duplexes through unreasonable cost and delay. More definitive guidance on this phrase will be provided with the adoption of administrative rules by the Land Conservation and Development Commission.

How will these requirements affect the development standards in my city/county?

Currently, the Department of Land Conservation and Development is only developing rules for duplex requirements. Once administrative rules are adopted, cities outside Portland Metro with populations between 10,000 and 25,000 (referred to as “Medium Cities”) will be required to adopt compliant development codes by June 30, 2021. Final guidance will be provided with the adoption of administrative rules.

What happens if a jurisdiction does not adopt a compliant development code by the statutory deadline?

If a jurisdiction does not adopt a compliant development code by the statutory deadline, a model ordinance adopted by the Land Conservation and Development Commission (LCDC) will apply directly and will pre-empt any existing local standards regulating duplex development. This model ordinance is under development and expected to be adopted by LCDC by August 2020.

Requirements for other middle housing types

Which jurisdictions will be required to permit other middle housing types (i.e. triplexes, quadplexes, townhouses, and cottage clusters)?

All Oregon cities with a population of more than 25,000, unincorporated areas within the Portland Metro boundary that are served by sufficient urban services, and all cities within the Portland Metro boundary with a population of more than 1,000 (referred to as "Large Cities"). A list of these jurisdictions is here: <

https://www.oregon.gov/lcd/UP/Documents/2019-11-20_CityList_HB2001_HB2003.pdf>

Where will they be permitted?

Middle housing types listed in HB 2001 other than duplexes must be allowed "in areas zoned for residential use that allow for the development of detached single family dwellings."

What is meant by "in areas zoned for residential use that allow for the development of detached single-family dwellings"?

The Department of Land Conservation and Development has only just begun developing rules for "Large City" middle housing requirements. The exact interpretation of "in areas" is pending development through rulemaking. More definitive guidance on this phrase will be provided with the adoption of administrative rules.

What is meant by "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"?

The intent of HB 2001 is make the development of middle housing types equally as feasible as single-family dwellings. As such, standards, approval criteria, or processes that impose additional burden on the development of middle housing types above the burden placed upon single family dwellings in the same zone are considered unreasonable - and therefore not in compliance with the intent of HB 2001.

How will local governments know their regulations would not be determined to result in "unreasonable cost or delay"?

The administrative rules and model code adopted through this rulemaking process by the Land Conservation and Development Commission will provide a set of development standards that are considered to be reasonable. Additionally, the rules will define certain parameters for development regulations which will provide jurisdictions with clear guidance as to what is considered unreasonable cost or delay. More definitive guidance on this phrase will be provided with the adoption of administrative rules.

How will these requirements affect development standards related to:

Density

Dimensional Standards (e.g. setbacks, lot coverage, height)

Design and Solar Access

Infrastructure and Public Facilities

Parking

The Department of Land Conservation and Development has only just begun developing rules for "Large City" middle housing requirements. Once administrative rules are adopted, these cities will be required to adopt a development code compliant with the

HB 2001 law and rules by June 30, 2022. More definitive guidance on how the bill will affect development standards for large cities will be provided with the adoption of administrative rules.

What happens if a jurisdiction does not adopt a compliant development code by the statutory deadline?

If a jurisdiction does not adopt a compliant development code by the statutory deadline, a model ordinance adopted by the Land Conservation and Development Commission (LCDC) will apply directly and will pre-empt any existing local standards regulating duplex development. This model ordinance is under development and expected to be adopted by LCDC by mid-November of 2020.

Infrastructure-Based Time Extension Request (IBTER)

What if infrastructure is unable to accommodate middle housing types?

A local government may request an extension of time to enact the required regulations based on an application identifying an infrastructure constraint (water, sewer, storm drainage, or transportation) to accommodating middle housing development in a specific geographic area. In order for this extension request to be approved by the Department, the local government must also provide a plan of actions to remedy the infrastructure deficiency.

When must an Infrastructure-Based Time Extension Request be submitted?

A “Medium City” must submit an extension request by December 31, 2020. A “Large City” must submit an extension request by June 30, 2021.

What is considered “significantly deficient” infrastructure?

HB 2001 states that local governments may request an infrastructure-based time extension if infrastructure is currently significantly deficient, or is expected to be by December 31, 2023. Of course, the level of deficiency is dependent upon the infrastructure system. The Rulemaking Advisory Committee and the DLCD project team are working with technical experts to determine this criteria. The exact interpretation of this section of the bill is currently under development in rulemaking. More definitive guidance on this phrase will be provided with the adoption of administrative rules.

How much development/redevelopment can be anticipated or assumed for an extension request?

HB 2001 provides at least some guidance as to how much redevelopment a jurisdiction could reasonably anticipate as a result of adopting middle housing development standards. The bill states that a local government may not assume an increase in residential capacity above achieved density by more than 3% for the purposes of accommodating needed housing over a 20-year planning period. For the purposes of calculating if existing infrastructure can accommodate this growth by December 31, 2023, draft administrative rules currently under development have simplified this redevelopment rate to a growth rate of 1% in infill development situations and 3% in greenfield development situations.

How long of an extension can be granted?

A local government is expected to make good faith action to remedy an infrastructure deficiency in a timely manner. The proposed length of the initial time extension is five years, with the opportunity for a one-time additional five year extension.

How does a jurisdiction prepare an IBTER for an area where they do not have ownership or authority over a type of infrastructure such as a State highway or service provider district?

Parameters for ensuring coordination between local governments and service providers is currently in development as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

Requirements for Accessory Dwelling Units (ADUs)

How will HB 2001 change how ADUs are regulated?

The new law prohibits jurisdictions from requiring owner-occupancy or off-street parking for ADUs. However, such regulations may be applied if the ADU is used for vacation occupancy.

What is the difference between an ADU and a duplex?

There may be rare situations where a proposed development could meet the definition of both a duplex and a single-family dwelling with an internal ADU. In these situations, the property owner will be allowed to elect which definition they wish to apply to their proposed development. The property owner is not allowed to define their proposed development as both or change their election.

Will HB 2001 require jurisdictions to allow both an ADU and duplex on a single lot?

We are currently exploring this legal question as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

General Questions

What is the Model Code? How will it be applied?

If a jurisdiction does not adopt a compliant development code by the statutory deadline outlined in the bill, then a model ordinance developed by the Land Conservation and Development Commission (LCDC) will apply directly. Currently, there are two model ordinances under development – one applicable to “Medium” cities and another applicable to “Large” Cities.

What is the difference between the Model Code and Administrative Rules?

The purpose of the Model Code is three-fold. Firstly, it provides an ordinance that can apply directly in the event a jurisdiction does not adopt an ordinance that complies with HB 2001. Secondly, local governments can choose to adopt the model code “wholesale” and be assured that the standards are HB 2001-compliant. Thirdly, it defines standards

for minimum compliance to provide guidance to jurisdictions that seek to develop their own middle housing standards.

The administrative rules outline the process and criteria by which the Department of Land Conservation and Development will evaluate middle housing ordinances adopted by local jurisdictions to determine whether they comply with the intent of HB 2001.

If a jurisdiction reaches a statutorily-defined population threshold, when will they be required to comply with HB 2001?

The required timeline for compliance with HB 2001 is currently under development as a part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

How will existing and future Codes, Covenants, and Restrictions (CC&Rs) be affected by HB 2001?

HB 2001 prohibits the establishment of new Covenants, Conditions & Restrictions or similar instruments that would prohibit middle housing or ADUs in a residential neighborhood. However, existing CC&Rs will remain in place.

What is meant by “clear and objective” standards? Will discretionary review processes for middle housing be allowed under HB 2001?

[OAR 660-008-0015](#) establishes that local governments may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Local governments may adopt and apply an optional alternative approval process based on approval criteria regulating appearance or aesthetics that are not clear and objective if the applicant retains the option of proceeding under the approval process that is clear and objective, the alternative process complies with applicable statewide land use planning goals and rules, and the alternative approval process authorizes a density at or above the density level authorized in the zone under the clear and objective approval process.

In other words, local governments will be able to adopt and apply a discretionary review process for middle housing, but all middle housing development applications must have the option of a clear and objective review path that does not have the effect of unreasonable cost or delay.

How will HB 2001 affect the Urban Growth Boundary (UGB) expansion process?

At periodic review 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 must 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.

HB 2001 allows jurisdictions to adopt density expectations assumed to result from the provision of middle housing, but this expectation may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures.

For jurisdictions located outside of a metropolitan service district (i.e. Metro), 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 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.

How will HB 2001 affect historic properties and districts?

Parameters for historic properties and districts in the model code and administrative rules are currently in development as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

Will HB 2001 affect the application of System Development Charges (SDCs), property tax exemptions/freezes, or construction taxes?

As part of the comprehensive plan and development code amendment process, HB 2001 requires local governments to consider ordinances and policies to increase the affordability of middle housing including:

1. Waiving or deferring system development charges
2. Adopting or amending criteria for property tax exemptions or freezes
3. Assessing a construction tax

House Bill 2003

Regional Housing Needs Analysis (RHNA)

What is the Regional Housing Needs Analysis?

The Regional Housing Needs Analysis (RHNA; pronounced “ree-na”) is a statewide needs analysis by region to analyze and quantify the housing shortage and future needs in our state. The methodology for this analysis is currently under development by Oregon Housing and Community Services. HB 2003 requires that this analysis determine housing needs of a region and of each city and Metro for a 20-year period. Additionally, the RHNA will include analysis related to the equitable distribution of publicly supported housing within a region and a housing shortage analysis for each city and Metro.

This is a feasibility study of how to conduct a regional housing needs analysis in Oregon, and the results and recommendations will be returned to the legislature for further consideration related to how this analysis might continue to be conducted in the future. HB 2003 requires that the methodology be completed and run by September 1, 2020, with a report due to the Oregon Legislature by March 1, 2021.

What data will be used in this analysis? Will it provide an accurate assessment of regional housing needs?

There is limited availability of statewide data sets that can provide sufficient level of detail to conduct the required analysis. To ensure the analysis provides as accurate of an assessment of regional housing needs as practical, the RHNA will utilize Census American Community Survey Public Use Microdata Sample (PUMS) 5-year data, and the shortage analysis will utilize Census Comprehensive Housing Affordability Strategy (CHAS) data.

Will there be opportunities to include qualitative data in the RHNA? Or is it solely quantitative?

Given the timeline and resource constraints associated with conducting a robust qualitative methodology, the RHNA as required by HB 2003 will be conducted using quantitative data. Recommendations in the legislative report due March 1, 2021 will include considerations of how to improve the process, which may include the incorporation of a qualitative component.

How are the regions defined?

Census American Community Survey Public Use Microdata Sample (PUMS) divides Oregon counties into discrete geographies. While it is possible to combine PUMS regions, it is not advisable to break these regions into smaller subregions. Unfortunately, this means that regional boundaries are limited by the boundaries utilized by PUMS data.

While final regions have not yet been defined, it is clear that boundaries in this first iteration of the RHNA may not fully correspond to what may be perceived as a regional housing market. The legislative report due March 1, 2021 will discuss the limitations of this approach and provide recommendations on creating regions that better reflect regional housing markets throughout the state.

What does “affordability” mean in context of the RHNA?

HB 2003 requires that the analysis must classify housing by “Affordability” which is housing that is affordable to households with:

1. Very low income - income at or below 50 percent of the area median income
2. Low income - income above 50 percent and at or below 80 percent of the area median income
3. Moderate income - income above 80 percent and at or below 120 percent of the area median income
4. High income – income above 120 percent of the area median income

“Area median income” is defined in the bill as the median income for households established by the United States Department of Housing and Urban Development. OHCS defines affordability as a household spending no more than 30% of their gross income on housing costs.

How will this analysis be used?

The purpose of the RHNA as prescribed in HB 2003 is to conduct a one-time feasibility study of how to conduct a regional housing needs analysis in Oregon, and the results and recommendations will be returned to the legislature for further consideration. The analysis will summarize the findings of the regional housing needs analysis, estimate of housing stock, housing shortage analysis and estimate of housing necessary to accommodate growth.

The legislative report provided by the Department of Land Conservation and Development will evaluate the methodology and assessment produced by Oregon Housing and Community Services. You can read about the specific requirements of this report in [Section 2](#) of the bill.

Housing Needs Analysis (HNA)

Which jurisdictions are required to conduct a Housing Needs Analysis?

HB 2003 requires adoption of a statewide schedule for cities with a population greater than 10,000 to update a local Housing Needs Analysis (HNA).

When will they need to complete a Housing Needs Analysis?

Cities within Metro will be required to update HNAs every six years, cities outside Metro must update every eight years. You can find a completed Housing Needs Analysis Update Schedule here: <

[<https://www.oregon.gov/lcd/UP/Documents/Final_HNA_Schedule_20191220.pdf>](https://www.oregon.gov/lcd/UP/Documents/Final_HNA_Schedule_20191220.pdf)

Housing Production Strategy (HPS)

What is a Housing Production Strategy? Which jurisdictions are required to produce a Housing Production Strategy?

HB 2003 requires cities with a population greater than 10,000 to prepare and adopt a housing production strategy, in accordance with rules adopted by DLCD. A Housing Production Strategy (HPS) is an extension of a Housing Needs Analysis and must include a list of specific actions that the city shall undertake to promote development within the city to address housing needs identified in their HNA.

When will they need to produce a Housing Production Strategy?

A city is required to adopt a Housing Production Strategy within one year of the adoption of their six or eight year Housing Needs Analysis.

What strategies will a jurisdiction need to incorporate in their HPS?

A housing production strategy (HPS) must include a list of specific actions that the city shall undertake to promote development within the city to address housing needs identified in their HNA. This may include:

1. The reduction of financial and regulatory impediments to developing needed housing, including removing or easing approval standards or procedures for needed housing at higher densities or that is affordable.

2. The creation of financial and regulatory incentives for development of needed housing, including creating incentives for needed housing at higher densities or that is affordable.
3. The development of a plan to access resources available at local, regional, state and national levels to increase the availability and affordability of needed housing.

Currently, the Department of Land Conservation and Development is developing rules that will provide further guidance on specific actions that a jurisdiction can incorporate into Housing Production Strategies they develop and adopt.

Will there be enforcement for jurisdictions to implement strategies identified in their HPS?

Section 6 of [HB 2003](#) establishes Land Conservation and Development Commission (LCDC) enforcement authority to ensure Housing Production Strategy implementation and progress. Specific parameters for enforcement is currently under development as part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

General Questions

If a jurisdiction reaches a statutorily-defined population threshold, when will they be required to comply with HB 2003?

The required timeline for compliance with HB 2003 is currently under development as a part of rulemaking. More definitive guidance on this will be provided with the adoption of administrative rules.

Implementation

Rulemaking

What rules will be adopted for HB 2001 and HB 2003?

In response to HB 2001 and HB 2003, the Land Conservation and Development Commission has initiated rulemaking to begin implementation of the 'middle housing' and housing production strategy requirements. These include administrative rules for the following elements of HB 2001 and HB 2003:

- Infrastructure Based Time Extension Request
- Middle Housing in "Medium" Cities
- Middle Housing in "Large" Cities
- Housing Production Strategy

To advise on this rulemaking, the commission directed DLCD to establish a rulemaking advisory committee. The purpose of the committee is to ensure that both the commission and DLCD hear from a broad group of stakeholders and interested persons during the rulemaking process. You can find out more information about committee meetings on the [Housing Rulemaking](#) page.

When will Administrative Rules be adopted?

Each set of Administrative Rules has its own timeline for adoption based on statutory deadlines and priorities of LCDC. They are listed below.

Infrastructure Based Time Extension Request – To provide local governments sufficient time to develop an IBTER, LCDC aims to adopt administrative rules by early August 2020.

Middle Housing in “Medium” Cities – The statutory required adoption date for administrative rules is December 31, 2020, but to provide local governments sufficient time to develop and adopt middle housing code, LCDC aims to adopt a model code and administrative rules by early August 2020.

Middle Housing in “Large” Cities – The statutory required adoption date for administrative rules is December 31, 2020. The anticipated date of LCDC rule adoption is November 12-13, 2020.

Housing Production Strategy – There is no statutory deadline for Housing Production Strategy rule adoption. The anticipated date of LCDC rule adoption is November 12-13, 2020.

How do I provide comments to DLCD, the Land Conservation and Development Commission, the Rulemaking Advisory Committee, or the Technical Advisory Committee during the rulemaking process?

You are welcome to submit comments electronically or in-person during the rulemaking process. If you would like to submit comments electronically, please submit them to housing.dlcd@state.or.us. If you would like to attend a Rulemaking or Technical Advisory Committee meeting and submit comments in-person, please visit the [Housing Rulemaking](#) page for additional information on time and location of these meetings.