

MEMORANDUM

City of Springfield

Date: 9/21/2020
To: Nancy Newton **COMMUNICATION**
From: Sandy Belson, Comprehensive Planning Manager **PACKET**
Mark Rust, Senior Planner
Subject: Rulemaking for HB 2001 and 2003 **MEMORANDUM**

INFORMATION SHARE:

To address the housing crisis in Oregon, in 2019 the State Legislature passed several bills including House Bill 2001 and 2003. As a result of HB 2001 and 2003, the Department of Land Conservation and Development (DLCD) undertook three Oregon Administrative Rules (OAR) rule-making processes under the umbrella of one rule-making advisory committee. These two bills require cities to take certain actions as further detailed in rulemaking. The Land Conservation and Development Commission (LCDC) has adopted one set of rules and will hold a public hearing this month on the second and third set of rules. This memo first provides more information about the pending rulemaking processes, followed by an explanation of the first set of adopted rules.

UPCOMING LCDC PUBLIC HEARING:

On September 1, Oregon Secretary of State Bev Clarno published two Notices of Proposed Rulemaking on behalf of DLCD. LCDC will hold a public hearing on both sets of proposed rules on September 25, and accept verbal and written comment on the draft rule text. The public hearing will be held open until the LCDC's next meeting on November 12-13.

Staff will meet with the Council's Development Code Project Governance Committee in advance of the LCDC public hearing on September 25 and with the full Council in work session on the Development Code Update on October 5.

DRAFT RULES DISCUSSION:Housing Production Strategy

DLCD has prepared amendments to Oregon Administrative Rule (OAR) 660-008 – Interpretation of Goal 10 Housing. Statewide Planning Goal 10 is “to provide for the housing needs of citizens of the state.” These rules implement portions of HB 2003 related to housing production strategies and housing capacity analyses. The rules outline the housing production strategy report that cities with a population greater than 10,000 will need to adopt in conjunction with a housing capacity analysis, as well as the associated reporting, review, and enforcement requirements for the program. The proposed amendments to OAR 660-008 are available on [DLCD's website](#).

Cities like Springfield outside the Portland Metropolitan Area are now required to submit a Housing Needs Analysis (proposed to be renamed a Housing Capacity Analysis) on an eight year cycle. Springfield is required to adopt an updated Housing Capacity Analysis by December 31, 2025. In the Housing Capacity Analysis, Springfield will express housing need as a number of needed housing units by type and affordability. Springfield will also determine how much land is necessary to meet the housing need. HB 2003 requires cities over 10,000 in population to adopt a Housing Production Strategy Report within one year of adoption of a Housing Capacity Analysis.

In the proposed rules, DLCD recommends that the Housing Production Strategy Report comprise five components:

1. Contextualized Housing Needs

This component would be based on the Housing Capacity Analysis, but would also take into consideration population and market trends. It would include an estimate of the number of people or households experiencing homelessness. It would also require cities to identify housing needs for people with disabilities, including hearing, vision, cognitive, ambulatory, self-care difficulty, and independent living.

2. Engagement

This component would identify the process by which the city has engaged a diverse set of stakeholders in the development of the Housing Needs Analysis and Housing Production Strategy and describe how their involvement influenced the Housing Production Strategy adopted by the city. The “Consumers of Needed Housing” must include the State and Federal protected classes. The “Producers of Needed Housing” consists of developers, builders, service providers, or other person or entities providing materials and funding needed to build housing.

3. Strategies to Meet Future Housing Need

This component would outline the specific actions, measures, and policies needed to collectively address the 20-year housing need. A product of the rulemaking process is a document entitled “[Housing Production Strategy Guidance for Cities.](#)” This document is a collection of various approaches that a city could take to address housing needs.

4. Achieving Fair and Equitable Outcomes

This component would require a city to describe how the selected Housing Production Strategies will achieve equitable outcomes with regard to the following factors:

- a. Location of Housing – creating compact, mixed-use neighborhoods for all residents
- b. Fair Housing – addressing patterns of integration and segregation, disparities in opportunity
- c. Housing Choice – providing protected classes access to desirable neighborhoods
- d. Housing Options for Residents Experiencing Homelessness – including permanent supportive housing
- e. Affordable Homeownership and Affordable Rental Housing
- f. Gentrification, Displacement, and Housing Stability – mitigation of impacts of gentrification

5. Notable Additional Elements (not all elements are listed in this memo)

- a. Description of any opportunities, constraints, or negative externalities associated with proposed strategies
- b. Description of actions necessary to implement the proposed strategies
- c. Discussion of how proposed actions will increase housing options for populations with disproportionate housing need
- d. Description of how the city will measure implementation and progress
- e. Summary of needs that are not addressed, including a description of strategies that were considered to address those needs

Upon submittal of the Housing Production Strategy Report, DLCD will review the accuracy and sufficiency of the report based on the legislatively prescribed criteria in Section 6 of HB 2003. In addition, LCDC has proposed the following review criteria:

- The city’s response to address the housing needs of those experiencing homelessness;

- Increased access to housing opportunity including the elimination of barriers to flexible, fair, and equitable housing options.

Though not a land use decision, DLCD will seek public comment in review of the city's Housing Production Strategy Report. DLCD will either:

- Approve the Report;
- Approve the Report, subject to further review and action by the Department; or
- Remand the Report for further modification.

Four years after adoption of the Housing Production Strategy Report, cities outside the Portland Metropolitan Area would be required to submit a narrative report that summarizes actions taken thus far, a reflection of the relative efficacy of the implementation, and a reflection of the actions taken in response to the questions asked in *Section 4 - Achieving Fair and Equitable Outcomes* of the Report.

Per the proposed rules, Springfield is required to adopt an updated Housing Capacity Analysis by December 31, 2025 and a Housing Production Strategy Report during the following calendar year. As presented, the Housing Capacity Analysis and the creation of a Housing Production Strategy will be significant additional work tasks for local governments, with the objective of better and more equitably meeting the housing needs of our residents, including those without homes.

The proposed rules include enforcement measures that DLCD could take if a city does not submit a complete Housing Capacity Analysis or Housing Production Strategy Report in a timely manner. They also describe what happens if a city does not carry through on implementation, including offering technical assistance, entering into an intergovernmental agreement with the city, removal of finance resource awards, and petitioning LCDC to require compliance.

Middle Housing

DLCD has prepared amendments to Oregon Administrative Rule (OAR) 660-046 – Middle Housing. These rules implement HB 2001 related to establishing standards for the siting and design of Middle Housing types in urban growth boundaries. Middle Housing types include: duplex, triplex, quadplex, cottage clusters, and townhomes. The rules are different for medium cities (cities with more than 10,000 and less than 25,000 population) and large cities (cities with over 25,000 population or cities with a population over 1,000 within a metropolitan service district). Springfield falls into the large city category. The [proposed amendments to OAR 660-046](#) are on DLCD's website.

HB 2001 requires that cities like Springfield, outside the Portland Metropolitan Area, must allow for the development of:

1. Duplex, including a duplex through conversion of an existing detached single dwelling, **on each lot or parcel** zoned for residential use that allows for the development of a detached single dwelling.
2. Triplex, quadplex, cottage clusters, and townhomes, including those created through conversion of existing detached single dwellings, **in areas** zoned for residential use that allow for the development of detached single dwellings. (emphasis added)

The legislation specifies a difference between allowing duplexes “on each lot or parcel”, and allowing the other middle housing types “in areas” included in the rules. This topic was discussed at length in the Rule Advisory Committee meetings. The Model Code and Minimum Development Standards as discussed below are how DLCD proposed to define what “in areas” means and how it is defined related to “on each lot or parcel”.

A large city may regulate or limit development of middle housing, other than duplexes, on the following types of lands:

1. Goal-Protected Lands (lands with resources or hazards protected under the Statewide Planning Goals);
2. Infrastructure Constrained Lands; and
3. Master Planned Communities.

As proposed with the draft rules, a large city would have four ways of complying with the state mandate to allow middle housing.

1. Model Code
2. Minimum Standards compliance
3. Performance Standards
4. Alternative Siting or Design standards

1) Model Code

The first way to comply with the new rules would be through adoption of the state model code. As part of the OAR's the Department of Land Conservation and Development, through the rule-making process, developed a model code to implement the new rules. This model code can be thought of as a safe harbor path that provides standards for a city to incorporate. It was clear through the rule making process that the model code is more restrictive (and/or punitive) than the minimum compliance standards referenced below. As an example, the model code would require triplex and quadplexes to be allowed on all lots zoned residential that would allow a detached single family home, regardless of lot size or density; whereas the minimum compliance standards allow a jurisdiction to limit triplexes to 5,000 square foot lots, and quadplexes to 7,000 square foot lots.

The model code could be used as a starting point for a jurisdiction to adjust some of the standards to better fit the specific needs of the community, while staying in compliance with the minimum compliance standards. The model code would also be applied to jurisdictions that do not adopt a compliant code by the time frame established in the legislation - large cities must adopt a compliant code by June 30, 2021. In this case the model code will completely replace and pre-empt any local provisions that conflict with the model code.

2) Minimum Compliance Standards

As an alternative to adopting the model code a jurisdiction can adopt standards into the existing development code that meet the minimum compliance standards provided in the OAR's. These are the standards that DLCD will compare amended development codes against to ensure they comply with the state law. They cover many aspects of development of middle housing including permitted uses; development standards like lot size, density, setbacks, height and parking; as well as design standards such as entry orientation, open space, and other design elements. These standards can be found in the draft OAR's [here](#). The minimum compliance standards are primarily contained in section 660-046-0220.

3) Performance Standards

As part of the Minimum Compliance Standards, Performance Standards would be an alternative to just the minimum lot size and maximum density provisions that are required under the Minimum Compliance Standards. The Performance Standards as proposed would allow a jurisdiction to take an alternative approach to allowing middle housing as long as the alternative approach allows for the following percentages of lots and parcels that allow a single-family detached home to be developed with middle housing:

- A. Triplexes – Must be allowed on 80% of lots and parcels;

- B. Quadplexes – must be allowed on 70% of lots and parcels;
- C. Townhouses – must be allowed on 60% of lots and parcels;
- D. Cottage Clusters – must be allowed on 50% of lots and parcels.

Additionally, the jurisdiction must ensure that equitable distribution of middle housing by allowing at least one middle housing type other than duplexes on 75% of all residential lot and parcels within each census block group within a large city.

4) Alternative Siting and Design Standards

Lastly, DLCD recommends a final way to implement the middle housing standards. If a local jurisdiction does not want to use one of the above three options it could adopt alternative siting and design standards if the jurisdiction can demonstrate that the standards meet a list of approval criteria specified in the rules. The proposed rules require findings and analysis to be provided documenting that the proposed standards will not, individually or cumulatively, cause unreasonable cost or delay to the development of middle housing. To demonstrate this, a city would include a comparison to the minimum design standards based on a list of complex factors included in the rules.

Large cities have until June 30, 2021 to adopt compliant regulations. The draft rules include enforcement measures if a city does not adopt compliant regulations in a timely manner. As discussed above in the Model Code section, the model code will be applied to jurisdictions that do not adopt a compliant code by the deadline established in the legislation. In this case the model code will completely replace and pre-empt any provisions that the local jurisdictions code conflict with the model code.

As part of the Springfield's Development Code Update Project, in February 2020, the City released draft code sections for public review. These draft code sections proposed to allow all the middle housing types on lots/parcels in residential zones, as long as the resulting density is allowed by the applicable zoning district in compliance with the Eugene-Springfield Metropolitan Area General Plan (Metro Plan). As presented, the requirements in the proposed rules do not accommodate Springfield's "density approach" to allow Middle Housing and would require the City to modify the existing draft housing code that is out for public comment. These changes would require significant additional work and corresponding amendments to the Metro Plan.

ADOPTED RULES:

Infrastructure Based Time Extension (IBTER)

Infrastructure to serve new middle housing development is a topic of key interest. The HB 2001 legislation included provision for Infrastructure Based Time Extension Requests (IBTER). Obtaining an extension would allow a city to delay approval of middle housing types in areas that have limited infrastructure to support the increase in density. In obtaining an extension, the city must also have a plan to provide and fund the necessary infrastructure within a certain time period. Rules have already been written and were adopted by LCDC at their August 5, 2020 meeting. Given the tight timelines in the legislation associated with the IBTER process it was necessary to prioritize adoption of these rules to allow jurisdictions to move forward. Through internal staff discussions and tracking the IBTER rule making process it does not appear that the City of Springfield would benefit from pursuing an IBTER.