



PLANNING COMMISSION
WEDNESDAY, DECEMBER 11, 2019

II. INFORMATIONAL

B. House Bill 2001/2003 (Pauly) (30 Minutes)



PLANNING COMMISSION WORK SESSION STAFF REPORT

Meeting Date: December 11, 2019		Subject: HB 2001 and HB 2003 Briefing Staff Member: Daniel Pauly, AICP, Planning Manager Department: Community Development	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Commission Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments:	
Staff Recommendation: none, informational item.			
Recommended Language for Motion: NA			
Project / Issue Relates To:			
<input checked="" type="checkbox"/> Council Goals/Priorities: A.6e. Engage the Community on Important Issues D.1. Complete the Equitable Housing Study and develop affordable housing strategies	<input type="checkbox"/> Adopted Master Plan(s):	<input type="checkbox"/> Not Applicable	

ISSUE BEFORE PLANNING COMMISSION:

Staff will present a summary of House Bills 2001 and 2003 adopted during the last legislative session, outline next steps for the City and State, and answer questions from the Planning Commission.

EXECUTIVE SUMMARY:

The 2019 legislative session included two major bills on housing: House Bill 2001 and House Bill 2003. The work session will cover these bills, including key elements, upcoming rulemaking, and timelines for compliance.

House Bill 2001 directs Wilsonville and other Cities to take a number of actions concerning allowing middle housing, the most noteworthy being the requirements to:

- Adopt regulations allowing duplexes on each lot or parcel zoned for residential use that allows for development of detached single-family dwellings.
- Adopt regulations allowing triplexes, quadplexes, cottage clusters, and townhouses (known collectively as “middle housing”) “in areas zoned for residential use” that allow for the development of detached single-family dwellings.

House Bill 2001 likely requires changes to Wilsonville’s development code, comprehensive plan text, legislative master plans (Villebois Village Master Plan and Frog Pond West Master Plan), and other documents. The changes will enable duplexes and middle housing (triplexes, quadplexes, cottage clusters, and townhouses) to be built in areas of the City previously developed and/or planned for single-family residential development. Key areas for the City to address, related to these changes, are design guidelines that promote the integration of a variety of housing types successfully into neighborhoods and plans that account for potential future impacts of additional housing units on existing and planned infrastructure.

The law requires duplexes be allowed on any lot or parcel that allows a single-family home. The law does not require middle housing be allowed on every lot but rather requires it be allowed in “areas zoned for residential use.” What is meant by “area zoned for residential use” will be a point of clarification from upcoming state rulemaking. Whether “area zoned” is equivalent to a block, neighborhood, or quadrant of the City will shape the community conversation and how the City regulates these types of units. Another major point of clarification anticipated from state rulemaking will be whether duplexes or multiple middle housing units on the same lot are counted as part of density calculations or, like ADUs, are not included. State rulemaking is also anticipated to clarify the extent cities can go with siting and design standards, which will be important as the City looks at regulating siting and design to ensure compatibility with surrounding developments.

House Bill 2003 directs local jurisdictions to regularly update their Housing Needs Analysis and adds a new requirement for jurisdictions to have a regularly updated Housing Production Strategy. The City’s most recent Housing Needs Analysis was completed in 2013. Recent work coordinating with Clackamas County on a countywide Housing Needs Analysis, together with the market analysis research conducted for the Equitable Housing Strategic Plan, prepares the City to quickly produce an updated Housing Needs Analysis over the next couple years. Similarly, the work on the Equitable Housing Strategic Plan may allow the City to quickly produce a Housing Production Strategy required by the State.

Questions remain related to both bills on exactly what will be required and the extent of the work program for Wilsonville. At the work session, staff will outline the process and proposed

timeline associated with rulemaking for the bills. City staff will continue to monitor and work with DLCD staff to ensure the appropriate elements are included in the work program for the Planning Division, Planning Commission, and City Council.

EXPECTED RESULTS:

City Staff providing information on the scope of House Bills 2001 and 2003 and timeline for local implementation. Planning Commission having the opportunity to ask questions regarding House Bills 2001 and 2003.

TIMELINE:

City staff will need to begin working on implementing HB 2001 as soon as DLCD completes rulemaking in order to meet the 2022 deadline. Given the substantial work associated with auditing and revising Wilsonville’s development code, comprehensive plan text, legislative master plans (Villebois Village Master Plan and Frog Pond West Master Plan), and other documents, City staff are also seeking grant funds from the State to help complete this work, which may also affect the timeline for this work program. The timeline for compliance with HB 2003 will continued to be monitored as it is clarified by DLCD.

CURRENT YEAR BUDGET IMPACTS:

Staff anticipates work related to House Bills 2001 and 2003 to be covered by grants and existing resources, including staff time, which will reduce existing resources for other work program items. If grant funding is not secured, there is a possibility additional City funding will be needed to seek outside technical support to complete the work, but no specific needs have been identified at this time.

FINANCIAL REVIEW / COMMENT:

Reviewed by: Date:

LEGAL REVIEW / COMMENT:

Reviewed by: Date:

COMMUNITY INVOLVEMENT PROCESS:

Public outreach will occur throughout the legislative process to adopt necessary changes to the development code, comprehensive plan, legislative master plans, and other planning documents. Education and outreach will occur to educate the community on the Wilsonville-specific impacts of the state required changes and garner input into siting and design standards. Any updated Housing Needs Analysis and Housing Production Strategy will also go through a public review process.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

Consistent with the purpose of the new legislation, there is the potential for change over time to increase the variety and availability of housing in different areas of Wilsonville.

ALTERNATIVES:

State law requires action. As the work program moves forward, different alternatives for implementing these requirements will be presented to the community, Planning Commission,

and Council. The alternative of taking no action would result in the state model code governing development in Wilsonville and potentially other compliance actions taken by the state.

CITY MANAGER COMMENT:

ATTACHMENTS:

1. Key Elements of House Bill 2001 (Middle Housing) from DLCD
2. DLCD Handout: House Bill 2001: More Housing Choices for Oregonians
3. DLCD Map Handout: Cities and Counties Impacted by HB 2001
4. Key Elements of House Bill 2003 (Housing Needs) from DLCD
5. DLCD Handout: House Bill 2003: Requiring Cities to Study Housing Needs and Create Housing Production Strategies
6. DLCD Map Handout: Cities Impacted by HB 2003
7. EcoNorthwest Memorandum Regarding House Bill 2001 Dated October 8, 2019



ATTACHMENT 1

Updated August 20, 2019

KEY ELEMENTS OF HOUSE BILL 2001 (Middle Housing)

House Bill 2001 (HB 2001) provides \$3.5 million to DLCD for technical assistance to local governments to:

- 1) assist local governments with the development of regulations to allow duplexes and/or middle housing, as specified in the bill, and/or
- 2) assist local governments with the development of plans to improve water, sewer, storm drainage and transportation services in areas where duplexes and other middle housing types would not be feasible due to service constraints.

DLCD Required Rulemaking: Who is affected: Significant dates: Local Government Deadlines: Effect of missed deadline:	Middle Housing Requirements		Infrastructure Deficiency Process
	Medium Cities	Large Cities	Medium & Large Cities
	DLCD Rules and model code adoption December 31, 2020	DLCD Rules and model code adoption December 31, 2020	DLCD Rules adoption [no date specified in bill] Target: July 2020
	Local Government Adoption of model code or alternative June 30, 2021	Local Government Adoption of model code or alternative June 20, 2022	Medium Cities Extension Requests by December 31, 2020 Large Cities Extension Requests by June 30, 2021
	Model code applies directly	Model code applies directly	No extension granted

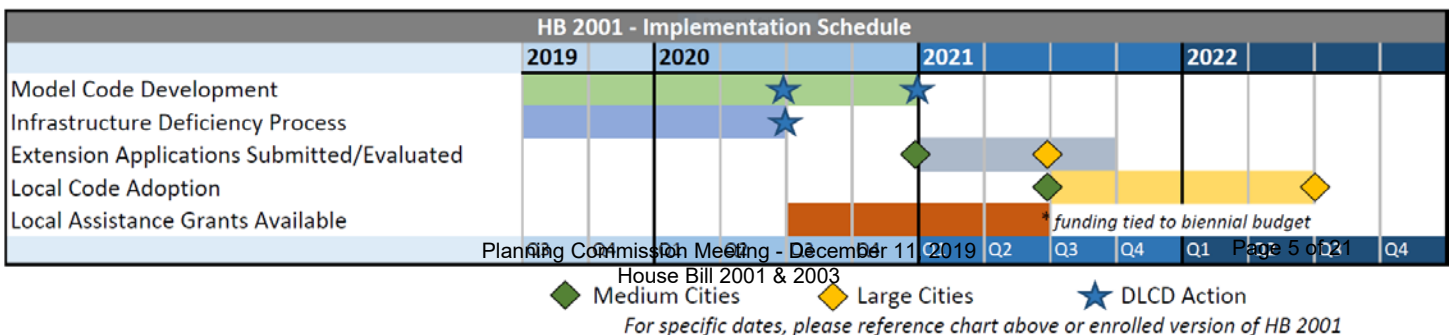
Medium Cities

All Oregon cities outside the Portland Metro boundary with a population between 10,000 and 25,000.	
Middle Housing Requirement	Duplexes “on each lot or parcel zoned for residential use that allows for the development of detached single family dwellings.”

Large Cities

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.	
Middle Housing Requirement	Duplexes (as above) <u>AND</u> triplexes, quadplexes, cottage clusters, and townhouses “in areas zoned for residential use that allow for the development of detached single family dwellings.”

Flexibility *Medium and Large Cities “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 cost or delay.”*



ATTACHMENT 1 Other Provisions in HB 2001

- ✓ A local government may request an extension of time to adopt the required regulations based on an application identifying an infrastructure constraint (water, sewer, storm drainage, or transportation) to accommodating middle housing development, along with a plan of actions to remedy the deficiencies in those services.
- ✓ The applications for time extensions based on infrastructure deficiency will be reviewed by DLCD and approved or denied.
- ✓ Housing Needs Analyses may not assume more than a three percent increase in housing units produced as a result of the adoption of middle housing regulations unless the local government can show that higher increases have been achieved to date.
- ✓ The bill amends requirements relating to accessory dwelling units (ADUs). The bill states, “Reasonable local regulations relating to siting and design’ [for ADUs] does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.” However, such regulations may be applied if the ADU is used for vacation occupancy.
- ✓ Changes the annual housing production survey required by passage of HB 4006 in 2018. Adds requirement to report on ADUs and units of middle housing, both for market rate housing and for regulated affordable units.
- ✓ Directs the Building Codes Division to develop standards to facilitate conversions of single-family dwellings into no more than four residential dwelling units.
- ✓ Prohibits the establishment of new Covenants, Conditions & Restrictions or similar instruments that would prohibit middle housing or ADUs in a residential neighborhood.
- ✓ The bill also notes that the department shall prioritize technical assistance to cities or counties with limited planning staff, or that commit to implementation earlier than the date required by the act.

This fact sheet is intended to summarize key elements of HB 2001. It is not intended to replace a detailed review of the legislation. For specific bill language, please review the enrolled version of the HB 2001:
<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2001>

“HB 2001 is focused on increasing the supply of ‘middle housing’ in Oregon cities – not by limiting construction of single family homes, but by allowing development of duplexes, triplexes, and quadplexes. Through technical assistance and resources for local governments, DLCD joins the effort to help create housing opportunities for all Oregonians.”

- Jim Rue, DLCD Director

For more information visit our website at www.oregon.gov/lcd

DLCD Staff Contacts: With questions about local implementation –
[Contact your Regional Representative](#)

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ATTACHMENT 2

House Bill 2001: More Housing Choices for Oregonians

In 2019, the Oregon Legislature passed House Bill 2001, a bipartisan bill to help provide Oregonians with **more housing choices**, especially housing choices **more people can afford**.

The new law lets people build certain traditional housing types that already exist in most cities, instead of being limited to a single housing type.

House Bill 2001 requires updates of local rules that have limited what sorts of housing people could build. These limitations have led to increased housing costs.

The Need for More Diverse, Affordable Choices

People need a variety of housing choices. Today, too many Oregonians are paying too much for the housing they have and are limited to renting or buying detached single-unit homes. Meanwhile, the composition of Oregon households is shifting; more than a quarter of households today are a single person living alone.



Before being outlawed, non-single-unit homes have long been built in our cities; this is a Salem triplex.

At different times in their lives, we have different needs. Imagine what sort of housing a young adult might want or be able to afford, or think of the needs of a retired person.

The Bill: Traditional Housing Types Allowed in Most Neighborhoods Soon

Under the bill, by June 30, 2021, Oregon's medium-sized cities must allow Oregonians to build duplexes in areas zoned for single-family dwellings. Most cities already allowed duplexes in certain circumstances.

By June 30, 2022, cities in the Portland Metro region and Oregon's other largest dozen cities (those over 25,000 population), must allow people to build duplexes, triplexes, fourplexes, cottage clusters, and townhouses in residential areas.

These houses can be more affordable and meet the housing needs of many younger people, older people, and people who work hard but can't afford a large detached house of their own.

The bill also provided \$3.5 million for technical assistance to cities, and has other details. Read the bill for details: olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2001/Enrolled

Siting and Design Flexibility; Transformation Expected to be Gradual

While the bill re-legalizes certain housing types, the bill is about choices. People can still build detached single-family homes. We expect most homes in residential areas to be built as such.

Cities can set reasonable siting and design requirements on the houses, including making sure there is adequate infrastructure. The bill directs the Department of Land Conservation and Development (DLCD) to help cities figure this out.

While the law allows traditional housing types, DLCD expects the transformation of housing choices to be gradual. Cities have allowed some of these types in certain areas. Not many have been built. Local knowledge of how to build these housing types will grow over time. The building of them will depend on local housing markets.

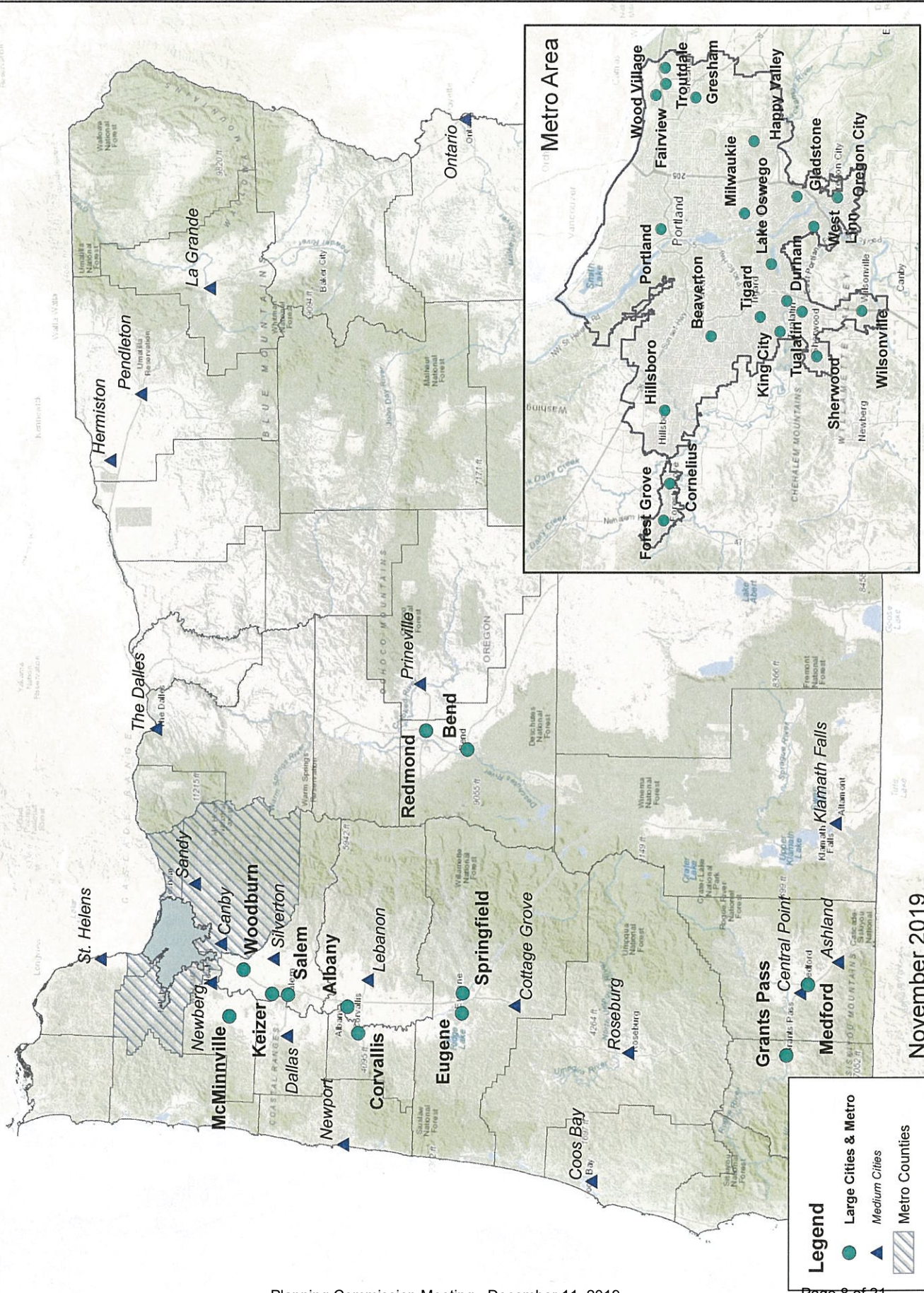
Learn More and Sign Up to Stay Informed

www.oregon.gov/lcd/UP/Pages/Housing-Choices.aspx

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Planning Commission Meeting - December 19, 2019
House Bill 2001 & 2003



Cities and Counties Impacted by HB 2001



November 2019



**KEY ELEMENTS OF HOUSE BILL 2003
(Housing Needs)**

House Bill 2003 (HB 2003) allocates \$1 million to DLCD to provide technical assistance to local governments to implement provisions of HB 2003, including housing production strategies and housing needs analyses.

Elements of bill:	Housing Needs Analyses (HNA)	Regional Housing Needs Analysis (RNHA)	Housing Production Strategy (HPS)
DLCD Required Action:	Adoption of Statewide Schedule	Develop Methodology & Conduct Analysis	Develop Methodology & Adopt Rules
State agencies:	DLCD	OHCS, DLCD, DAS	DLCD
Significant dates:	LCDC approval by December 31, 2019	Analysis completed by September 1, 2020 Reports to Legislature by March 1, 2021	DLCD Rules adoption [no date specified in bill] Target: July 2020
Affected cities:	All cities with a population greater than 10,000	Statewide	All cities with a population greater than 10,000
Local Government Deadlines:	HNA reporting requirements to begin ~2 years following the adoption of HPS rules (est. July 2022)	none	Earliest HPS deadlines for cities estimated: July 2023 City submits HPS to DLCD no more than 20 days after local adoption DLCD has 120 days for review
Enforcement:	No change to current LCDC enforcement authority	n/a	Establishes LCDC enforcement authority to ensure HPS progress

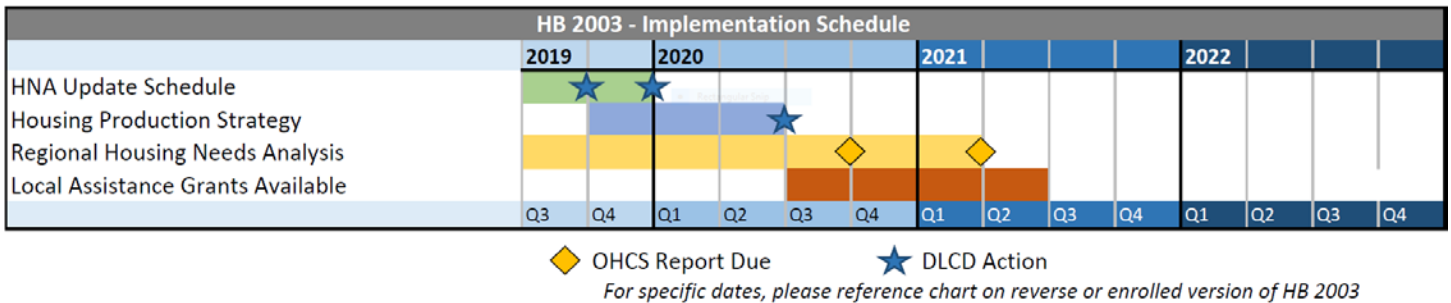
Key Elements

- **Regional Housing Needs Analyses (RNHA):** Requires multi-agency coordination, led by Oregon Housing and Community Services, in the development of a needs analysis by region to analyze and quantify the housing shortage in our state. The housing needs of a region will be determined for a 20 year period. Among other requirements, the RNHA 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.
- **Housing Needs Analyses:** Requires adoption of a statewide schedule for cities with a population greater than 10,000 to update a local Housing Needs Analysis (HNA). Cities within Metro will be required to update HNAs every six years, cities outside Metro must update every eight years.
- **Housing Production Strategies:** Requires cities with a population greater than 10,000 to prepare and adopt a housing production strategy, in accordance with rules adopted by DLCD, within one year of each city’s HNA update deadline. 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.

“The legislative focus on housing options for Oregonians in the 2019 legislative session resulted in new opportunities for the Department of Land Conservation and Development to partner with and assist local governments. We look forward to our continued work together to remove barriers to the supply of housing options.”

ATTACHMENT 4 Other Provisions

- ✓ Allows qualified affordable housing development on public land within an urban growth boundary, notwithstanding land use regulations, comprehensive plan, or statewide planning goals, subject to certain requirements.
- ✓ Clarifies that affordable housing provided in conjunction with religious uses may be accommodated in multiple buildings under certain circumstances.
- ✓ Clarifies limited circumstances in which height and density limitations beyond zoning limits may be applied to residential development.
- ✓ Transfers responsibility for administration of the annual housing production survey required by HB 4006 (2018) of cities above 10,000 population to DLCD. Survey will continue to be administered online.



This fact sheet is intended to summarize key elements of HB 2003. It is not intended to replace a detailed review of the legislation. For specific bill language, please review the enrolled version of the HB 2003:
<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2003>

For more information visit our website at www.oregon.gov/lcd

DLCD Staff Contacts:

With questions about local implementation – [Contact your Regional Representative](#)

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House Bill 2003: Requiring Cities to Study Housing Needs and Create Housing Production Strategies

In 2019, the Oregon Legislature passed House Bill 2003, a law to make sure communities are meeting the diverse housing needs of Oregonians.

The law requires Oregon's medium and large cities to study the future housing needs of their residents and to develop strategies to make sure that housing is produced.

Exploring Housing Needs, Developing Production Strategies

Oregon cities have had to study future housing needs when expanding an urban growth boundary. House Bill 2003 requires cities over 10,000 people to **analyze what housing is needed for current and future residents** every six to eight years.

The bill then requires each city to adopt a **housing production strategy** within a year of completing the analysis. The strategy must list specific actions the city will take to promote the development of all identified housing needs – such as revising regulations or providing financial incentives.

The bill also directs the Oregon Housing and Community Services Department to look at what **housing needs exist for the next 20 years in each region**, for all income levels, and how those needs can be met.

Rules, Technical Assistance Forthcoming

The bill requires the Oregon Department of Land Conservation and Development and Oregon Housing and Community Services Department to conduct rulemaking on how analyses and plans shall be done and timelines for completion.

The bill allocates resources to DLCD to provide technical assistance to cities working to complete their required housing needs analysis and production strategies.

Allows Affordable Housing on Public Lands and in Conjunction with Places of Worship

The bill also allows affordable housing to be built on public land inside urban growth boundaries, and allows multiple buildings for affordable housing to be built next to places of workshop.

Learn More and Stay Up to Date

Read the bill: olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2003

More details: www.oregon.gov/lcd/UP/Pages/Housing-Needs.aspx

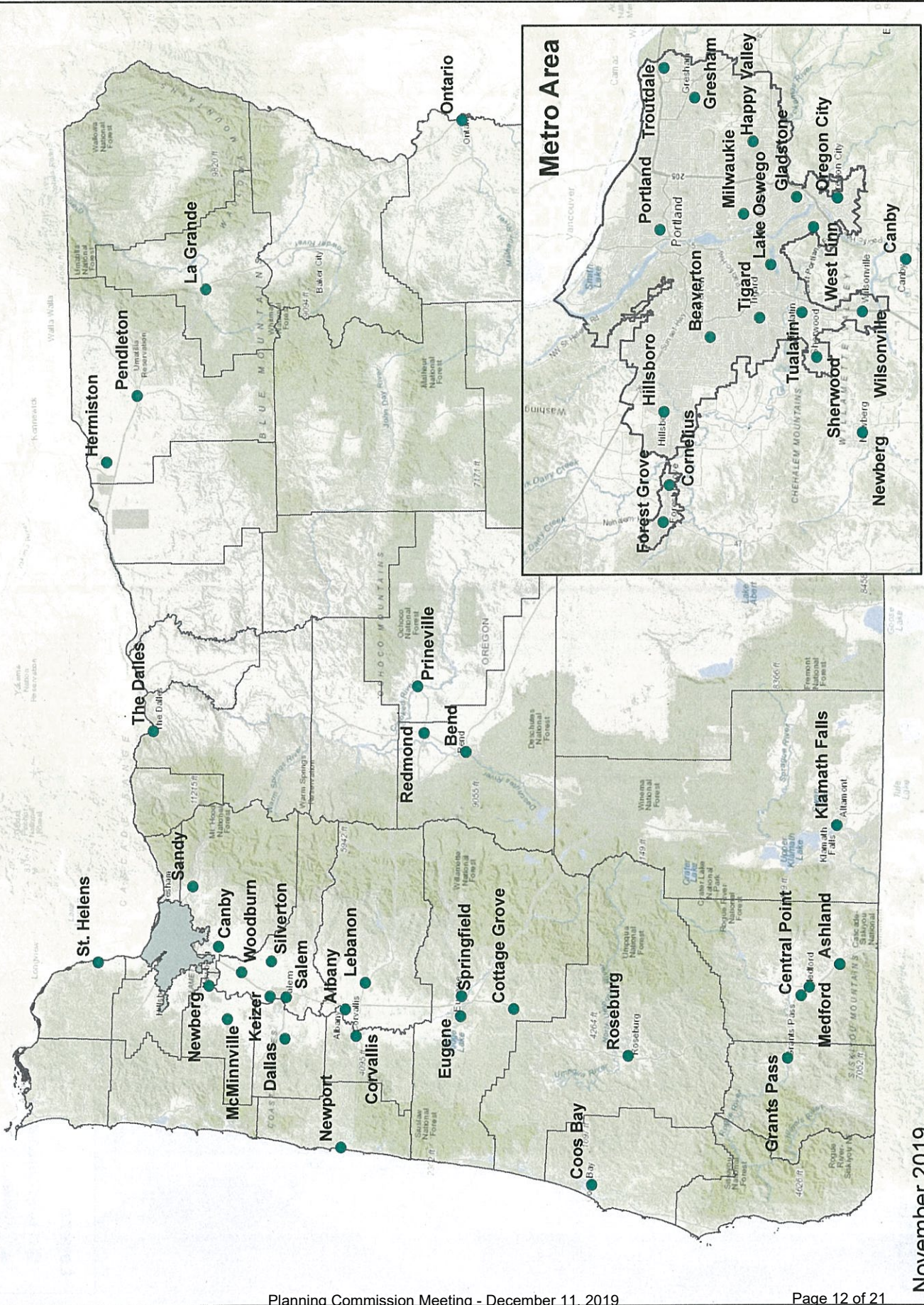
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Planning Commission Meeting - December 11, 2019
House Bill 2001 & 2003



Cities Impacted by HB 2003



DATE: October 8, 2019
FROM: Tyler Bump, Becky Hewitt, and Emily Picha
SUBJECT: Middle Housing Implementation Considerations

Introduction

In August 2019, the State of Oregon passed statewide legislation—Oregon House Bill 2001 (HB2001)—that requires many Oregon communities to accommodate middle housing within single-family neighborhoods. Many jurisdictions are trying to figure out how they will comply with the legislation. In our discussions with jurisdictions throughout the state, we have heard from planners, local officials, and residents who are concerned about HB2001’s mandates. We have also heard from planners working to expand options for middle housing in their single-family neighborhoods who want to ensure their efforts are consistent with the new law. This memorandum provides planners and local officials in affected jurisdictions with background on HB2001’s middle housing requirements, guidance on issues to watch for, and insights for how to make the most of the requirements HB2001 imposes and the opportunities it offers.

Middle housing is generally built at a similar scale as single-family homes but at higher residential densities. It provides a range of housing choices at different price points within a community.

Overview of House Bill 2001

*HB 2001 passed in August 2019. This summary is based on ECONorthwest’s current interpretations of the enrolled version of the text¹, drawing on DLCD’s August 2019 HB2001 fact sheet² and request for proposals (RFP) for consultant assistance with the Middle Housing Model Code. It is not intended to replace a detailed review of the legislation. **Jurisdictions should consult DLCD to confirm interpretation of the legislation while rule-making is in progress.***

HB2001’s requirements differ by city size. In brief:³

- “Medium Cities” — those with 10,000 to 25,000 residents outside the Portland metro area—need to allow duplexes on each lot or parcel where a single-family home is allowed. Duplexes can be subject to siting and design standards as long as those standards are reasonable and don’t create excessive cost or delay. While the requirement

¹ For specific bill language, see the enrolled version of the legislation, available online at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2001>.

² Available online at https://www.oregon.gov/lcd/NN/Documents/MiddleHousing_HB2001_FactSheet_Aug2019.pdf

³ The terminology used in this memo (“Medium cities” and “Large cities”) is not used in the legislation but is included in DLCD’s August 2019 HB2001 fact sheet, available online at https://www.oregon.gov/lcd/NN/Documents/MiddleHousing_HB2001_FactSheet_Aug2019.pdf.

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is straightforward, it may create challenges with density limits, parking regulations, etc. and will require thoughtful outreach.

- “Large Cities” — those with over 25,000 residents and nearly all jurisdictions in the Portland metro urban growth boundary (UGB) — must meet the same duplex requirement and also allow triplexes, fourplexes, townhomes, and cottage clusters in all areas that are zoned for residential use and allow single-family homes. Note that the additional middle housing types (other than duplexes) do not have to be allowed on every lot or parcel that allows single-family homes, which means that larger cities have some discretion as to where to allow these middle housing types. This creates a set of policy choices for these jurisdictions and also creates an opportunity to leverage the additional housing capacity to support transit, businesses, or other goals. There is also some flexibility to apply siting and design standards as long as they do not preclude all middle housing types or create excessive cost or delay.

Jurisdictions must comply with the new requirements within the next two to three years, depending on jurisdiction size. Meanwhile, the Department of Land Conservation and Development (DLCD) is beginning a process to create a model code and has not yet begun rulemaking to clarify key details of the law.

The remainder of this section provides additional details about the requirements in HB2001 and highlights areas of uncertainty in the legislation.

Which jurisdictions are subject to HB2001?

The legislation has different requirements based on the location and population of each jurisdiction. DLCD’s fact sheet summarizes the differences as follows:

- Large Cities:
 - Cities within the Portland metro area with a population of more than 1,000 residents
 - Portions of Multnomah, Washington, and Clackamas Counties within Portland metro area that are provided with sufficient urban services per ORS 195.065
 - All Oregon cities outside the Portland metro area with a population of 25,000 or more residents⁴
- Medium Cities:
 - Oregon cities outside of Portland metro area with a population of more than 10,000 and less than 25,000 residents⁵

⁴ DLCD’s definition in the Middle Housing Model Code RFP notes that population is as determined by Portland Metro if within the Metro boundary, by Portland State University’s certified population estimates if outside the Metro boundary, or by US Census data, whichever is most recent.

⁵ DLCD’s definition in the Middle Housing Model Code RFP notes that population in this case is determined by Portland State University’s certified population estimates, or US Census data, whichever is most recent.

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Areas of uncertainty:

- Some jurisdictions are very close to the population thresholds in the legislation (10,000 residents and 25,000 residents). While this has yet to be addressed through rule-making, presumably the population threshold applies at the time that compliance is required (i.e. 2021/2022, depending on the jurisdiction size).
- It is unclear whether/on what timeline jurisdictions that grow into a different size category following the initial implementation will trigger new requirements.

What housing types are included?

HB2001 defines middle housing to include duplexes, triplexes, quadplexes, cottage clusters, and townhouses. Townhouses and cottage clusters have specific definitions in the text. In particular, the cottage cluster definition specifies at least four housing units per acre with a footprint of less than 900 square feet, each with a common courtyard.

What does HB2001 require of local governments?

HB2001 does not restrict jurisdictions from continuing to allow detached single-family structures in single-dwelling zones, but requires jurisdictions to allow middle housing types in single-dwelling zones. The requirements are different for the two different groups of jurisdictions, as summarized below.

Medium Cities

Medium Cities must allow “a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.” In other words, every place the city allows a single-family detached home outright, it must allow a duplex outright, without different lot size standards. If the City allows single-family detached units on 5,000 square foot lots in a particular zone, then it will also have to allow duplexes on 5,000 square foot lots. Medium cities may apply siting and design criteria to duplex development as long as the regulations allow a duplex on each lot or parcel and do not create unreasonable costs or delay.

Large Cities

These jurisdictions must allow:

- “A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings” (same as above) AND
- “All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings”

Key areas of local determination for Large Cities include “siting and design” regulations, as long as those regulations do not discourage all middle housing types through unreasonable costs or delay. While this has not been fully clarified through rule-making, our interpretation is

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that cities can regulate middle housing based on locally identified siting or design criteria, provided that those regulations pass the following tests:⁶

- Every lot that allows a single-family home also allows a duplex;
- At least one type of middle housing is allowed in all locations that allow single-family housing (this may be met by the duplex requirement);
- All middle housing types are allowed somewhere within zones that allow single-family housing; and
- Middle housing types are not subject to regulations that create unreasonable costs or delay.

In other words, every middle housing type must be allowed somewhere, and everywhere that allows single-family homes must allow some middle housing.⁷ (Further guidance as to what constitutes reasonable “areas” where middle housing types other than duplexes must be allowed is likely to emerge during rule-making). Additional considerations for local siting and design criteria are summarized on pages 6-6.

Exceptions

There are a few key exceptions to the requirements above, including land zoned for primarily non-residential use and unincorporated lands with a holding zone or that lack sufficient urban services. Cities may also apply for an extension for specific areas where infrastructure is significantly deficient, but must establish a plan of actions (to be approved by the state) to address the deficiency.

Other Requirements

In addition to these development code requirements, HB2001 requires that jurisdictions also “consider ways to increase the affordability of middle housing” at the time that they adopt regulations or amend their comprehensive plan to comply. Jurisdictions must consider measures such as waiving or deferring system development charges, property tax exemptions or property tax freezes, or a construction excise tax.

Areas of uncertainty:

- Limitations on siting and design criteria will likely be subject to rule-making; however, jurisdictions will need to know that the set of requirements they are imposing are possible to meet. For example, a jurisdiction may not meet HB2001’s requirements if it limits fourplexes to areas within a half-mile of fixed-route transit on lots of a certain size but there are no lots of that size within the designated areas.

⁶ In addition to the limitations on siting and design regulations for middle housing types, HB2001 clarifies limits on “reasonable local regulations relating to siting and design” for ADUs, a term that was part of the 2018 Senate Bill 1051 legislation. Cities may not apply “owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking” to ADUs, unless they will be used as vacation rentals.

⁷ HB2001 also makes Contracts, Covenants and Restrictions (CC&Rs) put in place after the effective date of the legislation that preclude middle housing types or ADUs unenforceable.

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- It is not clear how the requirement to allow all middle housing types somewhere applies when a certain residential zone is limited to areas that have specific environmental or infrastructure constraints (e.g. steep slopes). It is likely that DLCDC will clarify these uncertainties through rulemaking.

What is the timeline and action required for compliance?

DLCDC is working to develop a model code, which is required to be complete by December 31, 2020. HB2001 requires that “Large Cities and Metro Cities and Counties” adopt zoning code regulations or comprehensive plan amendments to implement the requirements by June 30, 2022 or file a request for extension by June 30, 2021. “Medium Cities” only have until June 30, 2021 to comply and until December 31, 2020 to request an extension. Jurisdictions that do not comply by the deadline must apply the model code.

Areas of uncertainty:

- Rulemaking to clarify certain provisions of HB2001, including the requirements for extensions, has not yet begun.

How will this affect planning for housing capacity?

While the regulatory changes are intended to increase the potential for middle housing development, the legislation also includes some elements to ensure that cities do not over-estimate the additional capacity it will create. The DLCDC fact-sheet summarizes the standard as follows:

Housing Needs Analyses may not assume, in concert with a UGB amendment, more than a three percent increase in housing units produced as a result of the adoption of middle housing regulations unless the local government can show that higher increases have been achieved to date.⁸

Jurisdictions can point to areas within the same jurisdiction or in other, similar jurisdictions that are zoned for the same density that have actually achieved increases greater than three percent. Since few jurisdictions have rezoned lands for middle housing as required by HB2001, we do not think it likely that cities will be able to assume more than a three percent increase in housing units for the next several years, until cities can look to the results of recent middle housing rezoning. While the new statutory language only applies if a jurisdiction is proposing a UGB amendment, DLCDC and other reviewing parties may be skeptical of greater increases in density without evidence. (Note that this standard also applies when a local government adopts other “efficiency measures” to accommodate housing supply.)

In addition, the legislation specifically exempts local governments from the requirement to consider whether the amendments significantly affect an existing or planned transportation facility.

⁸ DLCDC, August 2019 HB2001 fact sheet, available online at https://www.oregon.gov/lcd/NN/Documents/MiddleHousing_HB2001_FactSheet_Aug2019.pdf

Implementation Considerations

Some aspects of HB2001 may create challenges for jurisdictions trying to adopt conforming regulations. Though some jurisdictions may wait for DLCDC to address these challenges through the model code, other jurisdictions will want to move forward with code amendments independently. **Jurisdictions that take a constructive and proactive approach can use HB2001 as an opportunity to advance local housing, economic development, and sustainability goals.** In this section, we have distilled important considerations for jurisdictions implementing HB2001 from our experience and conversations with jurisdictions throughout Oregon.

Density, Growth Management, and Policy Consistency

Existing maximum density standards may not allow middle housing types on the same size lots as single-family homes. Since all jurisdictions subject to HB2001 must allow duplexes on any lot that allows a single-family home, this creates a challenge with regulating density by units per acre: on a lot that previously allowed one unit, two must be allowed on the same size lot, effectively allowing twice as much density for duplexes. (For other middle housing types, a jurisdiction could set a minimum lot size for each type that better corresponds to existing density ranges.) Options to consider include raising the maximum density but keeping a minimum lot size that constrains the maximum density of single-family housing or creating an exception to density standards for a duplex on its own lot.

The form middle housing is mostly likely to take is driven as much by floor area as by residential density. While an allowance for additional units on a site can help increase the supply of housing units, the relationship of residential densities to floor area allowances will drive the type of middle housing that is most likely to be built on that site.

New minimum density requirements for single-dwelling zones can impact the policy and zoning code intention of plan districts and special overlay zones. Early in the middle housing zoning code development process, the jurisdiction should consider impacts to sensitive environmental areas and natural resources and other special areas.

Flexible siting and design criteria in HB2001 for triplexes, quadplexes, and townhouses can support jurisdictions' goals and policies. Middle housing and additional residential density allowances can help support community goals like increased transit ridership, access to commercial services, and the efficient use of land and existing infrastructure. Jurisdictions across the country are experimenting with implementing middle housing in targeted areas to support future growth. This approach would create broader allowances for middle housing types in single-dwelling zones near transit, neighborhood centers or commercial services, schools, or parks; or in areas with good access to jobs.

Evaluating Feasibility and Regulatory Barriers

Considering development feasibility during middle housing code development can help ground the process and code in reality. Conducting a feasibility analysis of middle housing development outcomes can help communicate a more accurate scale of impact and change that

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could result from new regulations. Markets vary within and across jurisdictions, which can lead to different outcomes for the same development standards and zoning regulations.

Physical and financial feasibility analysis can illuminate regulatory barriers to middle housing. Design requirements and development standards can have a greater impact on middle housing development than on either single-family or larger multi-family development. Developers constructing middle housing must work within tight physical site constraints of a single-dwelling context. Regulatory requirements that can disproportionately impact middle housing development feasibility include:

- Setback requirements
- Height allowances (e.g. two versus three stories) and other code provisions that limit height (e.g. solar access requirements)
- Parking requirements
- Design and compatibility standards (e.g. location of entrances)
- Systems Development Charges and impact fees

In particular, parking minimums can create physical and financial barriers to the production of middle housing types. Most jurisdictions require at least one space per housing unit (often more) for one-, two-, and three-dwelling structures. With such requirements, it may not be physically possible to meet off-street parking minimums on 5,000 to 7,000 square foot lots. Current parking requirements may be considered an unreasonable development standard for middle housing types, as defined in HB2001. Jurisdictions should consider removing or reducing parking minimums or satisfying parking minimums with on-street parking as part of the middle housing zoning code development process.

Aligning Definitions

The cottage cluster and townhouse definitions in HB2001 may not match existing local definitions. Jurisdictions will need to be careful when updating these definitions to avoid unintended consequences and nonconforming uses.

Focusing Engagement on Outcomes and Evidence

Jurisdictions should focus on preferred outcomes when engaging with internal staff and external stakeholders. At the start of this work, each jurisdiction should outline a vision for middle housing implementation that reflects community priorities, including relevant comprehensive plan policies and other planning goals. Identifying preferred outcomes driven by values can help move the community through an effective legislative process and implementation strategy.

Evidenced-based community conversations around middle housing are critical to successful middle housing zoning code implementation, including discussion of real and perceived impacts to single-family neighborhoods from middle housing allowances. A jurisdiction's communication and community engagement strategy for middle housing should focus on

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community values and moving towards preferred outcomes that support those values. Successful communication strategies in other jurisdictions have focused on these issues:

- **Single-family zoning and the history of exclusion through zoning:** It has been productive in cities throughout the country to acknowledge and demonstrate how zoning regulations have intentionally or unintentionally created or exacerbated exclusion based on race, ethnicity, gender, family status, ability, and income.⁹
- **Housing choice and housing need:** Market rate housing needs for residents in cities throughout the country fall along a spectrum from detached single-dwelling units to high density multi-family units. Middle housing types allow a broader range of residents to meet their needs in flexible ways.¹⁰
- **Scale of change:** Community conversations often focus on the perception of the rate and the scale of change that could follow implementation of middle housing allowances. As noted above, an analysis of financially feasible middle housing development can help set parameters for these conversations and provide community members with an expectation of how soon their communities might see change.
- **Community impacts:** The real and perceived impacts of middle housing allowances will generate discussion throughout the outreach and adoption process. Perceived impacts that can be overcome by design and development standards include scale and compatibility impacts like height, bulk, tree preservation, and open space requirements.

Proactively engage those who will benefit. Change in established neighborhoods can be a source of anxiety for many residents, so balancing community priorities will be important. Engaging renters and others who may benefit from the changes and ensuring their voices are heard at key decision points is essential.

Promoting Affordability

Changes to the zoning code are one way to encourage new housing development, but will only address part of the challenge. Jurisdictions need a variety of tools to address housing needs across the affordability spectrum and meet the needs of current and future residents. HB2001 requires jurisdictions to consider some of these tools. This is an excellent opportunity to understand the interactions between regulatory and financial incentives and identify the best strategies to encourage middle housing.

Our work with jurisdictions of many sizes throughout Oregon has shown that not all measures to increase housing affordability are equally appropriate for all communities. Each jurisdiction should analyze the benefits of various measures, their impacts on the jurisdiction's finances, and the jurisdiction's ability to administer the program.

⁹ Rothstein, Richard. *The Color of Law: a Forgotten History of How Our Government Segregated America*. Liveright Publishing Corporation, a Division of W.W. Norton & Company, 2018.

¹⁰ <https://www.sightline.org/2018/07/17/neighbors/>

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