

HOUSING PRODUCTION STRATEGY TECHNICAL ADVISORY COMMITTEE MEETING PACKET #6



TO: Housing Production Strategy Technical Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: Housing Production Strategy Technical Advisory Committee Meeting Packet #6

Housing Production Strategy Technical Advisory Committee Members,

Below, you will find information that will help you prepare for the Housing Production Strategy Technical Advisory Committee (HPSTAC) meeting scheduled for **July 20 from 9am-12pm**. *IMPORTANT NOTE: Due to public health concerns, this meeting will be held entirely over Zoom. Please do not plan to attend this meeting in person at the DLCD offices in Salem.* At the time of the event, please follow the Zoom link in the meeting calendar appointment. Zoom offers both a video conferencing option and a telephone option.

Please review the information provided in this packet thoroughly in advance of the meeting. As usual, we will have a full agenda and look forward to receiving your guidance.

Additionally, it may be helpful to keep a copy of this packet close by in the event technology does not cooperate as we intend. We will reference packet page numbers when we are discussing specific items.

Request for Review and Comment on Meeting Packet Materials

In the spirit of working quickly and efficiently to meet our deadlines, careful review of meeting packet review is essential. It is expected that HPSTAC members come to each meeting prepared having read the materials and ready to discuss model code topics in detail.

The primary objectives for HPSTAC 6 are to:

1. Finalize Housing Production Strategy Report structures and requirements and,
2. Determine HPS Report review and enforcement structure

Included in this packet are materials for your review that will further describe the purpose, contextual background, timeline of the rulemaking process, preliminary model code structure and concepts. Please review these documents prior to the meeting on **July 20 from 9am – 12pm**.

HPSTAC Meeting Packet #6 Materials List:

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NOTE: We have provided a discussion worksheet as packet item #4. This worksheet will mirror the discussion anticipated during the meeting. Please use the worksheet to take down notes or formulate your questions for the project team. You can also use this to submit additional written feedback to the project team at the meeting.

Contextual Background

HB2003 was passed in the 2019 Oregon Legislature to produce needed housing and to address specific housing needs identified in housing needs analyses. As an extension of the HNA process, the bill requires cities over 10,000 population to adopt a Housing Production Strategy within one year of the city’s HNA update deadline.

Per Section 4(2) of HB2003, “A housing production strategy must include a list of specific actions, including the adoption of measures and policies that the city shall undertake to promote development within the city to address a housing need identified in an adopted HNA.”

This section of the bill also states that actions to be considered may include the following:

- (a) 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;
- (b) 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; and
- (c) 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.

In creating a housing production strategy, a city shall review and consider:

- (a) Socioeconomic and demographic characteristics of households living in existing needed housing;
- (b) Market conditions affecting the provision of needed housing;
- (c) Measures already adopted by the city to promote the development of needed housing;
- (d) Existing and expected barriers to the development of needed housing; and
- (e) For each action the city includes in its housing production strategy:
 - (A) The schedule for its adoption;
 - (B) The schedule for its implementation;
 - (C) Its expected magnitude of impact on the development of needed housing; and
 - (D) The time frame over which it is expected to impact needed housing.

The bill also includes language that empowers the department as follows:

The Department of Land Conservation and Development may review cities for the purposes of prioritizing actions by the department, including:

- (a) Awarding available technical or financial resources;
- (b) Providing enhanced review and oversight of the city’s housing production strategy;
- (c) Requiring a report and explanation if a city does not implement an action within the approximate time frame scheduled within a housing production strategy;

- (d) Entering into agreements with the city relating to the city's modification or implementation of its housing production strategy; or
- (e) Petitioning the commission to require the city to comply statewide land use planning goals related to housing or urbanization.

If you have any questions on the materials in this packet or about the legislation itself, please feel free to contact me via phone or email, my information is listed below. We are grateful for your participation in this important initiative and look forward to working with you.

Thank you,



Ethan Stuckmayer

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Please note: email correspondence should be sent directly to Casaria.taylor@state.or.us who will then distribute to staff or advisory committee members as needed.

Rulemaking Advisory Committee Charge:

Members of the Rules Advisory Committee (RAC) shall provide guidance to agency staff to implement the legislative intent of House Bills 2001 and 2003. While complying with legislative intent, RAC members are asked to work with agency staff to develop recommended rules that:

- *Acknowledge the importance of reasonable regulations such as mass, scale, and design in accordance with clear and objective standards.*
- *Provide for affordable living choices including access to employment and transportation choice.*
- *Allow for phased development consistent with infrastructure supply.*
- *Strive to result in equitable outcomes that benefit marginalized communities and/or people.*

Housing Production Strategy Technical Advisory Committee Meeting #6

July 20, 2020; 9:00 am – 12:00 pm

This will be a **remote** meeting only, please find connection details in the calendar invite.



PROPOSED AGENDA

Housing Production Strategy Technical Advisory Committee Meeting		
Time	Topic	Who
9:00 am – 9:10 am	Welcome, Opening Remarks, and Review Agenda <ul style="list-style-type: none">• <i>Zoom Software Overview</i>	<ul style="list-style-type: none">• Anyeley Hallova, LCDC• Ethan Stuckmayer, DLCD• Samuel De Perio Garcia, DLCD
9:10 am – 9:15 am	TAC Member Introductions <ul style="list-style-type: none">• <i>Introduce yourself to the group</i>• <i>Name</i>• <i>Organization</i>	<ul style="list-style-type: none">• DLCD Staff• TAC Members
9:15 am – 10:00 am	Housing Production Strategy Report Structure and Requirements	<ul style="list-style-type: none">• Samuel
10:00 am – 10:55 am	Review and Enforcement of Housing Production Strategies	<ul style="list-style-type: none">• Samuel• Ethan• Sean Edging, DLCD
10:55 am – 11:00 am	Next Steps and Wrap Up	<ul style="list-style-type: none">• Anyeley• Ethan• Samuel

Housing Production Strategy Technical Advisory Committee (HPSTAC) Meeting #5
June 18, 2020; 9 am – 12 pm
Zoom Virtual Meeting

Key Insights Summary

Housing Report Strategy Structure – There was general agreement among TAC members that the Housing Production Strategy report should better incorporate racial equity more explicitly, specifically via disaggregating data by race and answering questions that directly address how a city will approach issues of racial equity. It will be important to ensure that data analysis required in a Housing Production Strategy is feasible for a city to access and incorporate into the report.

Homelessness – One primary concern of TAC members are the competing data sets used to identify populations of people experiencing or at risk of homelessness. TAC members provided a variety of local and regional data sources such as Continuum of Care organizations. It will be important for an HPS to better understand the diversity of communities facing homelessness and how those needs differ between communities.

Fair Housing Planning – TAC members expressed support for better alignment with and incorporation of consolidated plan information within the Housing Production Strategy. LOC offered a venue to meet with entitlement jurisdictions to better work out how to incorporate components from the Consolidated Plan. Similarly, DLCDC will need to consider the role of the Balance of State for non-entitlement jurisdictions.

Access to Opportunity – TAC members expressed divergent views on the appropriate approach to facilitating access to opportunity. Some members felt that the OHCS metric of “Opportunity Areas” provided a clear metric for jurisdictions to work towards, while others felt that tying to a specific index or metric in rule could be both inaccurate and potentially obsolete as better information is developed. DLCDC will need to consider the best approach towards ensuring local jurisdictions are providing access to opportunity, especially for communities who have been traditionally locked out.

Housing Data and Reporting – While some TAC members would like to see annual reporting requirements expanded in light of the lack of quality data throughout the state, others note that some of the proposed data reporting would pose additional challenge for local jurisdictions with no structure in place for tracking metrics such as affordability and tenure. One potential solution to this issue is a statewide data structure that distributes information to local governments, such as a Regional Housing Needs Analysis.

Roles and Responsibilities of Local Governments and Enforcement – There is recognition among TAC members that local jurisdictions comprise one of many partners needed to facilitate the development of affordable housing. Determining the appropriate balance of this with ensuring that local jurisdictions are making a good faith effort to achieve equitable and fair housing outcomes will be an important consideration for enforcement.

Attendees:

TAC Members:

1. Alexis Biddle
2. Alison McIntosh
3. Allan Lazo
4. Andree Tremoulet
5. Angel Falconer
6. Ariel Nelson
7. Brian Martin
8. Chris Pryor
9. Damian Syrnyk
10. Dan Riordan
11. Deb Meihoff
12. Diane Linn
13. Ellen Miller
14. Jes Larson
15. Kim Travis
16. Marisa Zapata
17. Mary Kyle McCurdy
18. Michael Boquist
19. Miranda Bateschell
20. Miranda Mishan
21. Nancy Donovan
22. Nancy Donovan
23. Sandy Belson
24. Shannon Vilhauer
25. Stephanie Jennings
26. Ted Reid
27. Tom Armstrong

Public:

1. Alan Chen
2. Alissa Hansen
3. Karen Perl Fox
4. Lauren Sommer
5. Jeff Blaine
6. Savannah
7. Tess Springer
8. Taylor Smiley Wolfe
9. R Hoffman

Staff/Consultants:

1. Anne Debbaut
2. Casaria Taylor
3. Cazmine Bonnot
4. Emma Land
5. Ethan Stuckmayer
6. Kevin Young
7. Robert Mansolillo
8. Samuel Garcia
9. Sean Edging
10. Lorelei Juntunen
11. Kate Srinivasan

Meeting Minutes

Housing Production Strategy Structure

- Introduction: Addressing fair housing and equity in the HPS and statutory/goal authority to address these issues.
- Allan: FHCO has for a long time looked at intersections of Goal 10 and Fair Housing in Oregon. You are right – this is one place where we can see fair housing and equity come forward. It is inherent in Goal 10, but it hasn't been practiced over time. Some of the concepts now are fairly new in this system – it doesn't mean we should continue business as usual. We should recognize these pieces will evolve; they are certainly not perfect. Appreciate that this conversation about those folks who have been "left out" of opportunities – which the market tends to not serve.
- Diane: Systemic issues deeply inherent in zoning code, which played a central role in segregation. To suggest that PoC land only in lowest income is not true; in order for families to stabilize and build equity, homeownership needs to be incorporated into this process. Let's build in Housing Production that allows people to migrate out of poverty and begin to thrive. If we don't do that, we are not making progress.

- Chris: Agree with previous two. When I look at #1 – when we talk about housing need for those experiencing homelessness, it’s a “catch all” category. There are different categories – each requiring a different approach to housing. Chronically homeless folks need permanent supportive housing structure, which requires much more resource and partnerships. It may be helpful for us to develop strategies for different kinds of homeless people.
- Alison: We know that PoC experience homelessness, rent burden, and disparities across the board. Is it possible for cities to think about disparities within these categories by race in addition to households that experience these problems?
 - Staff: I think as a data issue, getting homelessness information is one hurdle and disaggregating that by race is another which becomes more difficult. When that data is available, cities should use that to incorporate strategies to address specific needs. If there is information about different categories in that cohort, that data can inform policy decisions.
- Marisa: Alison was discussing more than homelessness, and yes, we can get all of those disaggregated by race. I don’t see race called out here, because PoC have a harder time accessing housing at all income levels due to structural racism. We should call out race explicitly and have a focus on a racial equity analysis. On homelessness, we are talking about producing units. There is no difference in the units to house any kind of homelessness. How you want to make those units produced is a cost count and many homeless folks are willing to accept lower quality housing. There’s a difference between producing housing and providing services to find and stay in housing. For counting a unit, the “type” of housing doesn’t really matter. It’s also a challenge if we assume chronic are the only people who need supportive housing. We need the counts and we need a series of strategies and programs to ensure people can access and stay in that housing. We need to call out programmatic activities that go along with production.
 - Staff: Good framework to think through this report.
- Shannon (Zoom chat): On June 23, Habitat for Humanity will hold a discussion to highlight the connection between racial equity and historic housing discrimination against Black Americans. The event will include Richard Rothstein, author of *The Color of Law*, Habitat Memphis President & CEO Dwayne Spencer, and Axios political reporter Alexi McCammond, and will stream live at www.habitat.ngo/raceandhousing. It is open to the public, and we encourage you to share it with your network of volunteers, donors and other members of your community. This event is open to the public.
- Ariel: There’s producing units vs services and programming that is a big departure from my understanding of the land use planning system. What is the role of the land use planning system in this? This is a bit outside of the scope – the concern is that bringing an equity lens is that it’s new and welcome, but I am worried we are trying to put too many goals into this narrow HPS. Key things for me include data – that it is available for all cities. It would be helpful if DLCD can name specific data sources that cities can rely on. Certainly, cities can be encouraged to incorporate additional data. Also, what are we asking cities to do here?
 - Marisa: Within the scope of this project to get into that, though data is an important consideration. What is about data analytics for counting vs data analytics for programming.
 - Ariel: This conversation is talking about public subsidy and services, which has not been part of the land use system. Is this realistic?
 - Staff: Goal 10 sets out housing needs requirements. Typically, an HNA does the math part of that and a formulation of need based on income/housing type. The collection of those items doesn’t fully get to housing need of all residents, so an extension of that requirement is the HPS which calls on cities to address how they are addressing housing

needs of all their residents. That's different than planning for housing – it goes beyond that. This is intended to ask “what is the entire housing need?” How a city addresses those needs is a policy decision that cities can decide.

- Stephanie: Interconnections of homelessness and fair housing with our land use system. Part of this is about the role of local jurisdictions. On homelessness, local jurisdictions are a critical partner – they have to remove barriers and provide incentives, but permanent supportive housing requires a lot of resources and partnerships that do not flow through cities, they typically flow through counties and CoC organizations. Cities need to be a partner, but would be hard pressed to be the provider. For an HPS to fully address homelessness goes a bit beyond the scope of HB 2003. On CDBG funds, there is data that jurisdictions need to collect and analyze that DLCDC should look into. For jurisdictions without those funds are covered under Balance of State will probably need additional support to collect and analyze that level of data. Important to consider capacity of jurisdictions to do this work.
 - Staff: DLCDC team understands that cities are not the only actor, but their role is to promote and be a critical partner. What we've put together does not change that role – it is asking a city what they are doing to be that partner.
- Deb: On homeless contextualization, I am worried if we look for this data, there may be disconnect between people without a home in a shelter and where they would like the opportunity to live. Because there is disparate opportunity for homelessness to find shelter across the state, I would worry that we entrench that disparity.
 - Staff: While the RHNA is happening in the background, it is a pilot study. Because we do not know its fate, we can't rely on a RHNA to do that analysis.
- Kim: On data, in conversations on the RHNA, the CHAS data is the data you use for disaggregation. There's an issue about reliability, especially for smaller cities, so there would need to be a margin of error analysis. On Stephanie's point, I think about opportunity to link up with existing planning – is this an opportunity to link up the work that happens in the consolidated planning process. Interested in hearing from entitlement communities that have had success. An example of an impediment includes zoning barriers to the production of group homes – in that case we have the link that zoning creates an impediments, but we should talk through how to operationalize the linking of this planning work.
- Angel: On the role of cities, there are a lot of opportunities cities have in the development of units. Beyond zoning, cities control the process for an application – the type of review can create real barriers and additional cost and opportunities for neighborhood associations to essentially block development. Cities can also control whether property taxes are levied. We have the ability to acquire land and use it for affordable housing. We can incentivize housing through variances. Cities can convene partners and resources rather than standing as an obstacle. I see huge opportunity for cities to be effective partners in production through land use and other means.
- Marisa: Part of this gets at the philosophy of this document. One of the issues is that the RHNA is a pilot, and whether that moves forward is unknown. Unfortunately, the HPS is the only chance to outline how we want to see this work done. If we were to account for production of needed housing, what would those be and what do jurisdictions need to accomplish that? And what do they have control over? This is not a be-all end-all for jurisdictions to do everything. As local planners, we often defer responsibility of providing resources to other entities. I would hope that we attempt to be leaders and say “we need this to achieve housing” recognizing localities can't do it all. On homelessness, there are different types of people experiencing homelessness, we tend to be hyper focused on the people we can see (unsheltered), which is

the smallest. The largest are kids in K-12 living unsheltered in hotels/motels and doubled up. What we should do it plan for the percentage of needs.

- Ariel: Want to emphasize and support aligning with existing consolidating plan data for entitlement jurisdictions. We would want to hook into the states' process, and communicate to smaller jurisdictions how they can tie into that process. In terms of data, under contextualized housing need – housing by tenure is not data that cities have with reliability (i.e. not a count or specific level).
 - Staff: Would welcome conversation with entitlement communities.
- Allan (Zoom chat): Just as a response to the issue about what data might be available, which several folks have mentioned, we should be clear as to what we are trying to define/analyze with data. I'm not sure we need data to tell us that disparities exist for certain communities. I think the question is what data sources can jurisdictions use consistently to measure progress being made in ending those disparities.

Staff overview of HPS Structure

- Stephanie: Comments on different sections. I struggle with right geographic area to analyze for homelessness. Many time counts are influenced by where services are offered. Many analyses focus on the County. This could render a city responsible for meeting need for the larger area. Contextualizing opportunity is tricky given what people value being close to. We need to allow for some level of understanding is that opportunities will look different from jurisdiction to jurisdiction.
 - Commissioner Hallova: Opportunity areas was very specifically defined. If we are going to implement a statewide requirement, having a uniform data set they can use will help jurisdictions not need to invent the wheel.
 - Stephanie: I do think there has been consternation about how opportunity areas is defined. It's a great concept, but how it's applied needs more work.
 - Hallova: Could this be a starting point? If we leave this open, jurisdictions may not know how to address this.
 - Staff: Data has to do with poverty rate, labor market engagement, low unemployment (and schools).
 - Hallova: Certainly work needs to be done, because it's a HUD definition, it's not something that we can reform. Should this be taken completely out?
 - Stephanie: I would encourage DLCD to look at different jurisdictions to see how these Census tracts play out and have conversation with local jurisdictions.
- Tremoulet: If there's further discussion on opportunity areas, welcome the chance to add what I've learned from Washington Co. We've included them in our fair housing plan in 2005. Over time, we learned about things that worked and didn't work with that data. I have practical and theoretical things to add to that discussion. We have strategies arranged by their functionality, but when a city is thinking about what it wants to accomplish, we've talked about an intention to focus on people who the market is not serving well (race, disability, presence of children). Strongly recommend that upfront, cities are encouraged to think through affordability levels and what types of tenure do they most strongly want to apply strategies do. I have a chart that will help do that. We were able to draw a link between income, tenure, and housing type. Local jurisdictions should gear towards building housing types that tend to serve specific incomes and tenures. Add question - What are communities doing to deal with gentrification/displacement? How is your jurisdiction creating opportunities for PoC, low income, etc. access specific opportunities.

- Hallova: We've added columns for affordability and tenure. It'd be great for people to look at that document.
 - Tremoulet: Important for jurisdictions to identify strategies upfront.
- Sandy: Raise contradicting language between pg 29 and 32, but given a city is not solely responsible for addressing all housing need goes a long way. If we expect these strategies to – on their own – to fully address housing need. That would set cities up for failure. On pg 34, there's a value judgement that services and shelters should be equitably spread through all neighborhoods. One thing I see is among nonprofits, they are moving towards more efficient services and consolidating rather than dispersing. For homeless populations, it will be more efficient if they can access one central resource.
- Mary Kyle: There isn't a requirement to employ any tools – seems to be a simplification of Goal 10 for Cities with specific regulatory methodologies must be looked at. I think that's the intent, but it's overly simplified. I'm worried that if there's too many eggs in the basket, they might not come through. On opportunity areas, seems to be a euphemism to describe neighborhoods that have excluded by race and class. I think it's a great area to focus on to ensure we have diversity of housing, but we should also look at what an area of opportunity is, isn't stagnant. Don't exclude areas that may have need now. How do we ensure that wherever people are living that there are tools to ensure they can benefit from investments and zoning changes.
 - Hallova: My main one is in talking about areas of opportunity is knowing what a city needs to respond to. If a question is too broad, you get nonspecific answers. DLCDC staff should separate this into a one page document and get specific wording. We need to identify people who can rewrite this.
- Dan: Clarification on page 33 – on data availability, includes religion and domestic violence survivors – is there data around there?
 - Staff: As we think through these questions, operationalizing these questions and identifying what data is available to respond to these questions. Softening the language may be good.
- Brian: We're hearing that cities will be responsible for what cities can do. On opportunity areas, what the opportunity areas bullet point may result in poor locational outcomes. Perhaps there should be an opportunity for local jurisdictions to put forward their own methodology.
- Joel (Zoom chat): Regarding Housing Strategy Guidance Document... I appreciate the list of tools/actions/policies that a city may implement to facilitate the production of needed housing. I disagree with the document prescribing and defining the affordability targets and as well as tenure that the particular tool/action/policy will create. Jurisdictions should intentionally connect strategies to affordability targets and tenure, DLCDC should not influence the jurisdictions perspective of what they could choose as affordability target and tenure target.

Local Jurisdiction Reporting Requirements

Staff overview of existing reporting requirements and how to track HPS implementation.

- Angel: An additional point of data is require cities to provide information on applications that were denied including reasons for denial.
- Stephanie: Anything that we can do to align requirements with 4006 will be important. Even in that process, there have been good conversations about definitions and counting. I am concerned about ability of local jurisdiction's ability to report on tenure.

- Hallova: You can report on strategies and programs that respond to increasing a tenure type and how many applications took advantage of those programs. You can ask developers what their intent is on permit submittal and what strategies work.
 - Stephanie: The tenure and affordability can vary a lot from initial intent. It would be overall better to estimate tenure and affordability at the census level.
- Dan: On HB 4006, should we also report on expiration of related affordable housing contracts?
- Shannon: Some of us are struggling with understanding opportunities for supporting vs enforcement. Understanding a cities' timeline for this work, but I hear this tension between the required and voluntary. We seem to have all carrots, so we have to make them delicious. Are there some sticks with HB 4006. We have completely worthwhile ambition, but maybe legislation doesn't quite get us where we need to be, but if we don't have sticks, is there a way to incentivize participation.
 - Staff: There may be something there, but this may require more conversation. Maybe there's something additional that cities can do that would build on these requirements.
 - Mary: Would suggest providing more enforcement through legislation to ensure intent of the bill is carried out. Carrots and sticks are fine, but not everybody is hungry. The Department has the ability to withhold TGM and technical assistance grants, including full reporting.
- Tremoulet: We are hungry for data on tenure and affordability and whether that comes annually or at mid-points. This information would be useful for OHCS and DLCDC. I am wondering if you have investigated feasibility of investing resources of obtaining data on what the market is doing now in terms of rents and sales prices.
 - Staff: How do they use that and how do they incorporate it into their HPS?
 - Stephanie: Information is available, but at a disaggregated level. Part of what happens with HUD analysis, is they do the analysis and provide that to local jurisdictions. This would result in a much more consistent methodology across the state. What's the best source of information? County assessment data records actual sales amounts than what someone would predict it to be. There are also market studies that look into rents, both of which are much more accurate than tracking at building permit level.
- Ariel: Also consider the data collected can continue to be tracked at mid-point requirement so we can track long-term. Agree we should have more standardized data around the state. Also want to remind on sticks/carrots, it's a matter of capacity for a lot of communities. Think of resources the state can provide, such as fair housing training. Try to align with existing programs.
- Hallova: On tracking, I think what we want to know is tracking affordable rental and affordable homeownership. Anybody who produces those two types of housing will produce any data you want. Really the focus is trying to get to marginalized communities who haven't been able to access these opportunities. If someone submits an affordable project is less likely to be sold.
 - Shannon: [review recording 2:34]

Staff on Mid-Point reporting

- Allan: Is the HPS a 6-8 plan or a 20 year plan that's updated every 6-8 plan
 - Staff: The latter.
- Deb: It might be helpful to give more guidance to cities on volume of work you expect at the mid-point, and could grow into something similar to the end size.

- Stephanie: Want to reiterate that interest is in regulated affordable. Important to consider you have annual reporting through 4006, mid point, and the plan every 6-8 years and important to think through what you want in that.
- Andree: DLCD will be receiving initial plans, the legislation doesn't require DLCD to review or approve them. What's the plan internally for review and analysis? Any intention to provide feedback to jurisdictions as they submit them?
 - Staff: There is a required review of HPS by the agency and Commission is charged with approving/remanding an HPS – we haven't fleshed out what that looks like but there will be review and oversight.
 - Hallova: This should be specific so people know what they're being judged on.
 - Staff: There's a requirement for LCDC to adopt criteria for which to evaluate an HPS
 - Hallova: When is that criteria developed?
 - Staff: That's part of the next discussion regarding enforcement.

Enforcement

Staff overview of criteria to evaluate outlined in bill and outlined by LCDC.

- Hallova: They will be judged on the strategies they put forward, correct? Not whether they met specific numbers?
 - Staff: Yes, it is based on what a city is doing to respond to the need, rather than the actual number. It's whether you are continually not meeting these or avoiding addressing them.
- Ariel: Appreciate the focus on clarity in enforcement. One thing I'd flag related to data, when looking at performance, it's easy to ask whether a city tried to do what it said it would do. There is a concern that in the chart on 33, there's language around tying strategies to unit production. There should be an understanding that one policy/strategy won't be what increases unit production. Want to caution as considering one strategy as effective or not – it happens within a larger context.
 - Hallova: From a real estate, there's usually disconnect between planning and development community as to what motivates them. I've pushed that the development community provides input. Cities shouldn't be in a vacuum as to what promotes development, they should receive feedback on what works.
- Sandy: On mid-point reporting, what would be useful to cities is DLCD putting a report together on info they're getting from the cities on strategies a city has in place.

Next Steps – Next meeting July 20th. Will continue conversations on enforcement and reporting.

Rulemaking Advisory Committee #8
Zoom-only Meeting
July 14, 2020

Key Insight Summary

Housing Production Strategy Structure – RAC members offered specific recommendations to the Housing Production Strategy report structure to better analyze and incorporate issues of equity, including homelessness, access to opportunity, and gentrification/displacement. RAC members noted that developing clear definitions and instructions for analysis will be important in achieving meaningful equity outcomes. Additionally, RAC members brainstormed best practices for jurisdictions to consider in tracking and evaluating the effectiveness of strategies over time.

Housing Production Strategy Review and Enforcement – There is general agreement among RAC members that one of the key purposes of the Housing Production Strategy is to ensure that local jurisdictions are taking a more active, positive role in the production of needed housing and meeting their Goal 10 obligations, while acknowledging that cities are only one player in the larger environment of housing production. Review and enforcement should be structured to reflect this, with review and enforcement procedures working to ensure good faith efforts of jurisdictions to increase the production and affordability of housing. RAC members suggested DLCDC should take a two-track approach to HPS compliance, each with varying tiers of enforcement. One track would focus on the actual completion of an HNA and subsequent HPS according to the 6-8 year schedule required by law, while the other track would focus on enforcement related to adopting and implementing strategies identified in an HPS. Each tier of enforcement would provide an opportunity to remedy issues, with each subsequent tier containing escalating consequences.

“In Areas”: Flexibility and Equity – In light of a letter sent from LOC on behalf of local jurisdiction urging the Department to provide additional flexibility to local jurisdiction in determining where middle housing types are permitted, RAC members discussed proposed options for the Department to consider. Members from local jurisdictions feel that the proposed “whittle away” approach in combination with minimum compliance standards bind the ability for local jurisdictions to regulate higher middle housing types, and propose an alternative in which local jurisdictions retain the flexibility in determining where middle housing may be located while ensuring that decisions meet Department expectations and do not reinforce patterns of segregation. Housing advocates note that this flexibility of local jurisdictions has been historically used to reinforce patterns of segregation, and the proposed standards do not provide sufficient specificity to sufficiently prevent inequitable zoning decisions and patterns of segregation by race and income. DLCDC staff will need to determine what approach could meaningfully address concerns of both flexibility and ensuring the provision of fair and equitable housing choices.

Cottage Cluster Model Code Standards – RAC members provided commentary on the draft Cottage Cluster code for Large and Metro Cities. Members provided general comments and direction to increase the flexibility and likelihood that cottage clusters will be built. Measures to increase flexibility include the ability to provide units on individual lots as well as limiting any additional standards (e.g. design, dimensional, and parking standards) that inhibit the feasibility of a cluster project. Finding the right balance of incentives will be critical for ensuring the successful implementation of cottage cluster code.

Attendees:

RAC Members:

- Allan Lazo
- Brian Martin
- Chris Pryor
- Colin Cooper
- Debbie Aiona
- Derrick Tokos
- Drew Farmer
- Ed Sullivan
- Ellen Miller
- Hope Beraka
- Jacen Greene
- Jeannine Rustad
- Jesse Sharpe
- Joel Madsen
- Kelsey Zlevor
- Kimberli Fitzgerald
- Lynne McConnell
- Mark Rust
- Martha Fritzie
- Mary Kyle McCurdy
- Michelle Glass
- Nancy Donovan
- Nancy McDaniel
- Sarah Adams-Schoen
- Shannon Vilhauer
- Stephanie Jennings
- Ted Reid
- Tim Morris

Public:

- Alexis Biddle
- Anthony Farmer
- Ariel Nelson, LOC
- Kim Armstrong
- Kyle Macadam
- Laura Kelly
- Lauren Sommers
- Mary Piper
- Robin Smith
- Olivia Cleaveland
- Pauline
- Sophie McGinley
- Terri Harding

Staff/LCDC:

- Casaria Taylor
- Sylvia Ciborowski
- Robert Mansolillo
- Ethan Stuckmayer
- Sean Edging
- Kevin Young
- Gordon Howard
- Commissioner Anyeley Hallova
- Emma Land
- Anne Debbaut
- Palmer Mason

Meeting Notes

Meeting overview – HPS Structure and Enforcement and HB 2001 Large Cities “In areas” and Cottage Cluster standards

Update on Rulemaking process overview and timeline.

- Hallova HPS Strategies timeline
 - Cutoff of Aug 19th to provide RAC members time to submit last minute strategies

Housing Production Strategy – Review and Enforcement

- Purpose to discuss Review and Enforcement of HPS
- Overview of previous HPSTAC meeting from Mary Kyle
 - Agreement to better incorporate data by race to advance racial equity

- Discussion of data for those facing homelessness
- Local jurisdictions play a significant role in producing housing in terms of removing barrier and providing incentives
- Fair housing planning and HPS alignment with Consolidated Plans and Analysis of Impediments
- “Access to Opportunity” – Best approach to ensure local jurisdictions are providing access to opportunity, especially for communities who have been historically locked out.
- Reporting requirements – alignment with HB 4006 and need to collect data on tenure and affordability.
- HPS Structure – Up front need to link HNA and RHNA regarding housing types/affordability with gaps locally, and being intentional about who the market is not reaching.

Homelessness

- Jesse: Data on homelessness [Review recording]
 - Drew: It is difficult to know where individuals are residing within a region. I agree with the changes.
 - Allan: Is there a system around COC or community activist organizations for sharing data on homelessness?
 - Jacen: The McKinney-Vento data will be great for rural communities if you apply the right factor based on assumed family size (not complicated).
 - Staff: The intent of the “blended” approach is to allow jurisdictions to use the best available data, with an understanding that it is often a barrier.
- Michelle: When thinking about equity and TAC recommendations on connecting HNAs – I am curious about how historic mix is often used to project future housing need. E.g. Southern Oregon uses existing low density patterns to project future housing, which may conflict with goal of providing more affordable options to people who have been traditionally locked out.
 - Staff: In lieu of revising HNA, we can ask cities specifically how their projected housing need actually serves contextualized need in the HPS.
- Ed: How are you addressing needs of those with disabilities? Did not see in the RHNA.
 - Staff: This would be part of the additional work that a City needs to do in terms of understanding full breadth of housing need. We have not incorporated this specific analysis as a requirement, but it is part of the fair housing analysis that they do in the later portion of the HPS on Fair and Equitable Housing.
- Debbie: We want jurisdictions to have sufficient capacity and resources left to focus on actually work on production. So, giving them flexibility on how they fulfill this requirement should help by not overburdening them with onerous reporting and analysis.
- Mary Kyle: Should we require that if the CCO and/or McKinney-Vento data is available for a jurisdiction, that they use it? And any other data they want?
 - Hallova: It seems that there should be a base requirement and allow the ability to go above and beyond.
 - Jesse: This is a good idea. Every school district in the state is required to collect McKinney-Vento data.

Engagement

Update on making this section more specific and an outline of the structure.

- Debbie: Remind you to consult taxpayers in addition to consumers and producers
- Staff: SB 1051, which passed in 2017, revised the definition of "needed housing" in ORS 197.303 to specifically include the housing needs of low, very low, and extremely low income households. This requires a more detailed discussion and analysis of low income housing needs in HNAs since the bill passed.

Strategies and Tools

Update on the role of a Housing Production Strategy in meeting needs over a 20-year planning period.

- Hallova: Tenure and income – wondering about standardizing these things. Income should be broken down in a specific way.
 - Staff: Tools, policies, and strategies will work to analyze affordability and tenure.
 - Hallova: Publicly-Subsidized (< 30% AMI), Affordable (30-80% AMI), Workforce (80-120% AMI), Market Rate (> 120% AMI)
 - Tim: Seems to be comprehensive
 - Hallova: When people collect building permits, jurisdictions would be able to receive data they don't normally have. I don't know if we can require that, but it would be nice to have that information.
 - Staff: Good to provide in best practices
 - Ellen: Providing that information at building permit would be welcome from builders. Support the idea of incorporating into best practice

Achieving Fair and Equitable Housing Outcomes

Update on the updates to the five major questions.

- Hallova: If we use a defined term with a definition or geography that specifies what we mean to make implementation clear.
 - Stephanie: Part of the discussion was the federal definition doesn't fit the Oregon context, it was designed at a national level to apply to a lot of different areas. This discussion is how to think about opportunity as not one or two census tracts but opportunity throughout an entire city. The intent behind this is to open access to opportunity that people have been locked out of, which is not the same as the federal definition of opportunity areas. This will look different for different communities and populations (e.g. family with children have different priorities than older people)
- Allan: On opportunity, I am not sure if the definition was a federal designation but an OHCS index.
 - Staff: They are federally designated.
 - Allan: We should look into one definition for what "opportunity" means. Leaving this to a community does not always result in the best outcome. Additionally, we have not addressed areas of vulnerability (e.g. displacement) and looking into strategies that mitigate vulnerability (e.g. preserving naturally occurring affordable housing).

- Staff: DLCD is working with Dr. Bates and Zapata on developing a guidebook on anti-displacement and how to incorporate this into the HPS.
- Mary Kyle: As someone who is not fluent in these various definitions/uses of “opportunity,” it is hard to determine how to think about this and its applicability. Will this be clarified, eventually?
- Staff: Makes sense to move from defined terms to have jurisdictions think about what this means
- Mary Kyle: We think through areas as mutually exclusive, many of these are entirely overlapping in some ways. It seems like there are a lot of basic common denominators.
- Derrick: What is DLCD looking for in terms of local jurisdictions to produce? Is this shelter beds? A broader scope of safety net services? How does this fit within the construct of HB 2003 and what we can realistically do. On HB 4006 reporting – On gross units produced, not net. Does not capture units that are demolished/lost as part of the report. Consider including that consideration in the HPS.
 - Staff: Intent of the HPS is to recognize that Cities are one important player in the future production of housing and ensure they are putting a good faith effort towards encouraging production.
- Hallova: We all have similar goals in this section and are struggling with “what do you ask? And what do you get in return?” and how this will move the needle. A lot of these questions haven’t been asked, which result in not getting answers. We need to get answers first to determine how our approach works or doesn’t work.
 - Allan: It's also the point I've made that the current Goal 10 ecosystem hasn't been asking these types of questions.

Reporting

Update on two-pronged reporting approach with annual number data and a mid-term report with reflection of what has taken place. Provide feedback through survey.

Review and Enforcement

What is DLCD/LCDC’s role in reviewing Housing Production Strategies to ensure jurisdictions are making a good-faith effort in meeting identified housing need.

- Michelle: This is looking really great – the percentage of households that are severely rent burdened and linking that to houselessness. There was a 2018 Zillow report solidifying the link between rent burden and growth in houselessness. I see this as supporting houselessness data in this process, because cities can affect rent burden in significant ways.
- Shannon: What happens if there is a community within a city where there is active dissent to these principles like middle housing development. This is the concern in the back of my mind.
- Allan: It should not be a surprise that I'm supportive of the additional attributes item #2 about increased access to housing opportunity. Also, are the criteria listed here for review of the annual report, mid-term report or for the HPS report overall -- or all of them?
 - Staff: This portion would be for the overall report and the mid-point review would help us understand if a city is making advancements. The annual report would help identify progress.

- Tim: Curious as to why “severely rent burden” is called out over just “rent burdened”
 - Staff: This list is pulled from the list identified by the Legislature.
 - Tim: I raise it because we are seeing a lot of additional regular rent burden falling through the cracks of federal support.
- Joel: Curious to hear more from DLCDC on capacity to carry out and the goals/ideals identified in this RAC.
 - Staff: This is the goal of the enforcement conversation that we want to have. If something rises to the level of not meeting this, what is the process for remediation?
- Mark: Sandy Belson is on the HPSTAC, so I haven’t been tracking this. On the City perspective, how this is assessed is important – is there a consideration for a small city not having a lot of an impact. Will there be opportunity for a more regional consideration over isolated approaches.
 - Staff: It makes sense to not look at Springfield independently from Eugene. We have to take this context into consideration. It’s so unique that it’s difficult to write rules around this.
- Debbie: We support the two additional attributes that LCDC will address in its review of HPS sufficiency:
 1. The city's response to address the housing needs of those experiencing homelessness, and
 2. Increased access to housing opportunity including the elimination of barriers to flexible, fair and equitable housing options.
- Ed: Let me again raise my longstanding concern over the lack of standards for HNAs, which is the most significant element of the HPS. There simply aren’t those necessary criteria for evaluation. DLCDC has not sought review of HNAs in LUBA under the PAPA process. Is there any thought about getting HNAs to meet a common standard so that we can compare apples to apples in weighing the adequacy of a city HPS?
 - Allan: Agree with Ed. See my comment above about the Goal 10 ecosystem.
 - Mark: Agree with Ed also. HNA have not been upholding Goal 10 for a long time.
 - Staff: HNAs will need to address needs to low income, very low income, and extremely low income households. At the agency, we view that as heightened need for analysis and data in HNAs that come our way. Though this does not go fully to fix the issues with HNAs. With that said, it’s not clear that HB 2003 opens the ability to reconsider rules around HNAs. Certainly, we are interested in engaging in rulemaking to change divisions 7 and 8, but we are not likely to do that this biennium, but hopefully in the next biennium.
 - Hallova: If there was anything about the needs analysis that is most needed to be changed to address the comments that were made, is there something specific?
 - Staff: There are a few things we have discussed, including homelessness, housing underproduction, specialized housing need (ORS 197.303 provides a short list), etc. I think changes made by SB 1051 give heightened focus to low income. HNAs have gotten better, but the level of specificity will evolve. Local governments will be writing HNAs with HPS requirements in mind.
 - Jesse: there is also no standard or enforcement on engaging impacted folks. Despite 1051, a lot of cities continue to fall very short on this.

Enforcement

How do we respond if the “good faith effort” does not follow through. HB 2003 lists potential tools for enforcement. What is the hard stop at where enforcement ends? Where should enforcement begin? Are there tiers to this enforcement?

- Mary Kyle: How do you know if a city is “failing” and what do you do about it? There’s a statement of objectives – assuming a City’s HPS meets enough of the criteria but some strategies don’t work out, can the Department build in timelines for fulfilling need and if not, fixing issues when they arise with requirements to address failure with guidance from the Department within a timeframe to remedy the issue? E.g. reliance on a funding measure to support housing development that fails.
 - Staff: This reopens the review process. Interested to see the City perspective
 - Mary Kyle: The idea is that remedial actions should be taken into account in the process.
- Shannon: Thinking ahead, how do we reward optimistic and realistic endeavors to do this work. If there’s a community that is resistant – they maybe wouldn’t have access to certain types of programs.
- Kimberli: While my area of expertise is not HPS - I do have a lot of experience with compliance. I support the tiered enforcement approach. Generally I've found 3 steps that work: 1. Notice /opportunity for voluntary compliance- additional tech assistance offered from DLCD; 2. Enhanced Review with Formal correction required (with a clear action and timeline defined); 3. Enforcement (financial or other consequence).
 - Staff: Hearing the need to distinguish between need for resources vs jurisdictions being reluctant to perform the work and each warrants separate responses.
- Joel: Along with Shannon on tiered approaches, there are times where a community has an inability to adopt an HPS versus implementing policy recommendations from a HPS. Maybe this is how we define different tiers of enforcement.
 - Allan: I would agree with Joel and also agree with the tiered approach. It also seems like DLCD is being asked or asking to assess the intent of a jurisdiction's intent, which is not an enviable position to be in, but agree that there is a need to evaluate intent to comply vs. resist the underlying concepts of the legislation. Agree with Ethan that there does need to be a difference in response from DLCD based on evaluating intent.
 - Ed: Supportive of tiered approach.
- Mary Kyle: Because strategies can be more lofty, we should build the assistance/reward/assistance into the process. On the tiers, except that step 1 of a notice/opportunity is that they must comply mandatorily.
 - Staff: Advanced review would likely be at a latter time. The first may need to be more collaborative.
 - Mary Kyle: This is about Goal 10 (and historic failure to meet it) and we are being collaborative. Building timelines with deadlines should be built in. Failure to meet a deadline should require notice.

Large and Metro Cities Model Code and Administrative Rules

- Ellen Miller update from last MCTAC meeting: Greater and stronger focus on getting implementation right. The implementation is really important and we shouldn’t continue trends that have gotten us here today.

- “In areas” discussion – DLCDC brought RAC approach to the TAC, it was quickly raised by cities that there were more options than what was in the memos. Resulted into the letter from LOC, which is the basis of conversation today. Proposal in TAC meeting (pg 75) is applicability written to provide local government the ability to determine the areas. There was a difficulty in getting a comprehensive way of defining parameters, so DLCDC offered a process allowing the jurisdiction to include findings for areas “whittled away”. On protective measures: Provides degree of deference to cities. No longer considering numerical standards given arbitrary and exclusionary considerations.
- Feasibility research from ECONW (pg 57) – FAR will be considered as a development standard scaled to lot size. Parking – poses impacts on smaller lots.
- Townhouse development and design standards – No maximum limit on number of units and scaling lot size based on SFD lot size, and using lot size to regulate in lieu of minimum density. Discussed lot width and street frontage. Increase in total maximum height, up to three feet. FAR has been removed.

“In areas”

Update on previous MCTAC and subsequent conversations on changing the approach to “in areas” in light of issues raised by cities and LOC to provide jurisdictions greater deference in deciding where to allow middle housing.

- Brian Martin on issues with “whittle away” approach and alternative ideas
 - Outline of perceived issue with the “whittle away” approach taking flexibility from jurisdictions
 - Alternative of providing distributed outcome of lots where housing could be allowed.
 - Define Expectations: Allow middle housing in areas on significant number of lots
 - Development rules: provide opportunities to reduce segregation through distributing middle housing
 - Doesn’t exclude wealthy neighborhoods
- Allan: Brian, could you say more about how adopting the "whittle away" strategy as part of the model code or minimum compliance would prevent cities from implanting other strategies? Wouldn't they be able to implement those strategies as long as those strategies met the minimum compliance? Are you saying some of the strategies currently being used and implemented don't meet the proposed minimum compliance?
 - Brian: Minimum compliance provisions take away the specific tools cities use. Minimum lot size. Maximum density. Etc.
 - Allan: Thanks, yes, sounds like Robert is also addressing some of those examples.
- Colin: I want to characterize this third approach as not further whittling away. E.g. Hillsboro has provided and embraced middle housing, and what we would like is the ability to do master planning to provide variety of housing. We believe in meeting the entire market segment of housing that people need.
- Mark: I didn’t catch the third approach. Agreement with opportunity for flexibility. I want to highlight Section 2 (5) – Regulations that do not individually or cumulatively discourage development of all middle housing types. I am not thinking about wholly excluding an area, but there may be areas where certain types are not permitted but others are.

- Hallova: I understand the issue described and problem that comes with something not being specified everywhere – this allows for wealthy and powerful to have greater control over the outcome. What is the risk that contributes to tools to “whittle away” and the bad outcomes?
 - Ted: I concur with Commissioner Hallova's question. Is there actually a big risk that triplexes and fourplexes would be built on small lots?
 - Allan: I also concur with Comm. Hallova's question. Agree with Comm. Hallova's statement there about considering the extreme example from those cities that may not be well-intentioned.
 - Colin: We do not want to pit neighborhood against neighborhood. We are looking to enable greenfield development, it makes it more difficult to plan for maximum infrastructure. Additionally, historical lot standards may warrant additional restrictions. We want flexibility to create these wonderful neighborhoods.
 - Hallova: It's important to keep in mind the jurisdictions that would seek to undermine, and thinking through the extremes are important.
 - Brian: It is hard to come up with examples, because we haven't done our project yet, but one of the dangers is with the “one size fits all” approach for the state. The other danger is how cities react to minimum compliance – there is one city considering reducing their minimum lot size for SFDs and now there is less incentive to do that.
 - Mark: One example, in Springfield we are looking to reduce minimum SFD lot size. Part of the answer needs to be “exceeding the authority of the legislation”. If we call cities “bad actors”, it provides ability to spear into this solution.
- Jesse: I think it is really important to be clear that there are cities with stakeholder process that are rooted in traditional groups of developers. I am concerned that when we add too much flexibility, we have an increase in segregation in the community. Being aware on this call that we have a lot of people with good intentions, and that may not reflect when we implement these in Southern Oregon. I am always concerned about that excess flexibility.
- Mary Kyle: I have the same question as Hallova. I think there is more than one way to read the legislation. I remember of the lofty things we said in the beginning of this RAC about how we were going to do things differently. I think that is consistent with the intent of HB 2001 to break down segregated patterns. I am not persuaded by notions of ways we've done minimum lot sizes, density, or PUDs. In every city, we have increasing segregation and income/race polarization. This isn't about “good actors” or “bad actors” – we know we have segregated housing practices on the ground. I think we need to be bolder. “One size fits all” doesn't resonate with me because if it doesn't work in a City, it doesn't get built. Deciding to avoid increasing flexibility is not in compliance with Goal 10. Why would we not allow all of these liberally through greenfield development, because this is the opportunity to size things right. Having a % doesn't get at all to location, which is the point of HB 2001. These middle housing types are not dense enough for high frequency transit. I appreciate that the cities in their letter wanting to promote racial equity and decrease exclusivity, but I haven't heard anything specific about that and to know when it's being achieved.
 - I agree with Mary Kyle and Comm Hallova on this point
 - Kim Armstrong (public): I am a little concerned that this group is putting a lot of energy into seeking to avoid some edge case terrible middle housing developments that are extremely unlikely to actually occur in reality and to MKs point, no community has

existing housing that equitably meets the needs of its entire community. Clearly the ways we have done this historically doesn't work.

- Kim Fitzgerald: Are there any thoughts yet from DLCD staff about clear metrics for this third alternative that could be established under minimum compliance?
- Allan: As Hallova talked about earlier, we can recognize that we are of similar mind and intent. I wonder if we need to admit to some degree that what we are talking about is jurisdictions without that good intent. We know that the flexibility and intent built in has created income and racial segregation. I wonder if we need to recognize the flexibility we are talking about could be used either way.
 - Brian: Flexibility has to be accompanied by expectations and accountability.
 - Kim (public): I think Alan's point is excellent— flexibility has historically been disproportionately used to reinforce racial inequities in housing, there doesn't seem to be any reason to allow some areas with additional incentives for middle housing, starting from "assumed to be allowed everywhere"/whittle away
 - Staff: The definition of "in areas" can't be a neighborhood judgement call or a decision about how a neighborhood should look based on how they looked in the past. If there are ways for a city to say that a housing type isn't going to work, they can show that they need those tools back on the table.
- Hallova: If we can hone in on the issues, maybe we can find solutions that provide additional flexibility.
 - Allan: The opposite is not being expressed here. The "whittle away" approach was developed to prevent that. Perhaps there is a way to incorporate flexibility into that approach.
 - Staff: The intent of the third option is to provide that mean to provide findings to put additional tools back on the table. So long as there is no exclusionary portion and does not cause unreasonable cost or delay. The safe harbor outlines the approach that is acceptable, but allowing a local jurisdiction to go beyond that with the burden of proof on them to demonstrate it doesn't result into unreasonable cost or delay.
 - Sarah: I agree with Allan's point too. In the zoning context, flexibility has almost ubiquitously been used to cause and sustain racial and economic segregation in communities everywhere—liberal, conservative, etc. Some flexibility makes sense, but flexibility with clear standards are needed to make the kind of bold change that HB 2001 requires.
 - Allan: Yes, agree with Sarah above. So we'd need to look pretty closely as to whether we might be able to implement minimum compliance standards with clear standards that respect the intent for substantive change that HB 2001 intended.
- Timothy: This particular amendment go against the goal and intent of HB 2001. I don't understand the context in which it is being proposed. I struggle to picture the worst case scenario. Allan made a good point is that additional flexibility creates additional loopholes for exclusive communities. As a neighborhood advocate, this does encourage exploitation. We have to be careful in creating "flexibility" because it creates more opportunity for bad actors to utilize exceptions to block housing. We should try to create a long lasting bill, adding additional exemptions and convoluting what we see will not make it long lasting. My solution: I am not sure that this is the solution that we should go down. I think there is a lot of reason why we are

here. It's possible the word "area" was omitted and not addressed. Here, we have the opportunity to set the precedent for the word "area". Zoning laws have been used to address segregation, but I don't see this proposal addressing that.

- Ed: I see this as the defining moment for the RAC. There is a danger that "flexibility" will be used to undermine House Bill 2001, and the "presumptive" approach is correct. I think the "leaving out" is exceptional and should be justified. The work of this committee is to provide housing opportunity, not flexibility for jurisdictions. It is a state sanctioned device to exclude and discriminate. If we come up with a solution that is puffy and vague, then HB 2001 means nothing and the work of this group is a sham. It seems to me that the people who came up with this alternative need to come up with concrete standards. If you want to get out from under that obligation, show us your standards.
 - Brian: HB2001 includes flexibility, and cities have suggested expectations DLCD should set to prevent jurisdictions from evading the law's intent.
- Martha: At Clackamas county, when we say "City" we mean large, unincorporated areas. It's flexibility with expectations and accountability. We are trying to find a balance of all jurisdictions affected. It is really to write code for bad actors, but you can't penalize actors who are doing good work. I want to thank DLCD for entertaining this conversation. It is going in the right direction, but there is an understanding that we do not want a "one size fits all" or something that creates the potential for abuse. Finding the balance will be important.
 - Allan: Yes, thank you, Martha and others. Agreed that there is a balance we need to figure out how to strike here.
- Colin: It's absolutely about performance. We are just working on this now and we will fly forward to find something that works. Zoning as a tool is a blunt force and blanket, and you can point it to bad outcomes. We are looking to flexibility to create better opportunities, not less housing.
 - Sarah: The third approach has been described today as an approach that will allow cities to produce more middle housing and affordable housing in areas that traditionally excluded it. I have to admit I'm still not understanding how a presumptive approach is problematic given that goal stated today (by Brian and others, I think).
 - Mary Kyle: What are the concrete metrics by which residents and the public can understand, and DLCD can measure, whether "expectations" are met and the intent of HB 2001 is fulfilled? These words are still way too vague - "flexibility," "better communities," etc... are not it.
 - Brian: I'd suggest people start with the LOC letter and the letter on page 126 of the RAC packet. The concepts need additional details and specifics, but cities are willing to help make things more specific. Also, it is not hard to measure whether, as applied, a city's development code allows middle housing in a city and where.
 - Ed: No Brian, those are no standards. A vague opposition to segregation is not enough. Where is your standard in "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." Where is your standard when you say that the state should establish standards. What are YOUR standards. You don't have them and should not expect us to consider what is

not before us. When you do have something, we can consider it, but don't leave us to the tender mercies of "flexibility" without a standard that is real, rather than aspirational.

- Jesse: Brian, we sit in meetings with a mayor who believes the city does not need to comply with goal 10. When confronted about segregation, he told us "if people can't afford to live here, there's cheap housing in the mid-west." We know that he will not comply if he is given the flexibility to do so. We can measure the lack of compliance but short of a lawsuit, the metric has no enforcement.
- Jesse: I think we need to be clear that meaningful accountability is extremely weak outside of the NWern corner of the state. If we increase flexibility with accountability, we need to make sure that accountability can be upheld in more rural and more removed metro communities.
 - Allan: Yes, thank you, Jesse. I think we often forget how different things potentially really are outside of the metro/urban areas.

Cottage Cluster Standards

Update on Cottage Cluster standards proposed in the LCMCMC. Context surrounding the intent behind developing code language around cottage clusters – develop a reasonable, off-the-shelf description of cottage cluster development and allow jurisdictions to define cottage clusters.

- Mark: My concern is ownership opportunity. I would push to come up with some kind of safe harbor language that could be integrated that could lead the way for somebody to easily integrate.
 - Staff: i.e. provide a modular option for fee-simple ownership
 - Mark: At the back of the packet is a letter from Spevak advocating for this and notes that it's a major obstacle to not allow fee-simple options because it is preferred and summarizes the consequence is that the product becomes a rental product. One of the biggest parts of our housing strategy is to increase ownership opportunities.
 - Mary Kyle: I like Mark's modular suggestion for cottage clusters.
- Hallova: The only type of cluster I attempted to do this, I needed to attach these (two-story) structures to the townhomes. Because of minimum setbacks, I was not able to pull it off.
- Hope: To expand on Commissioner Hallova's example, creating the cottage cluster inside of a townhouse project, the goal was to create four permanently affordable housing units. There were zoning complications that made it difficult to execute in a market rate project. I would prefer to not see additional limitations at all – there are plenty that already exist. With regard to parking, garages, etc. I would prefer not to see any additional limitations. I would try to make sure local jurisdictions couldn't further encumber projects like the Commissioner mentioned.
- Mary Kyle: I agree with Hope, on the 900 SF – it is defined as the footprint which could allow for two stories. They should be allowed to be attached or detached. We should err on making these more likely to be built.
 - Staff: That's typically what the market bears – two stories makes sense. We wouldn't want to create a situation where these clusters become so large that they don't serve the intended income groups.
- Hallova: Trying to be affordable at \$300,000 - \$350,000

Next steps and LCDC upcoming meetings.

HOUSING PRODUCTION STRATEGY ADVISORY COMMITTEE MEETING PACKET #6



TO: Middle Housing Model Code Technical Advisory Committee Members
FROM: Ethan Stuckmayer, Senior Housing Planner
SUBJECT: HPSTAC Meeting #6 Discussion Worksheet

Housing Production Strategy Committee Members,

In order to meet our ambitious timeline and schedule, meetings of the HPSTAC will need to be a space for robust conversation and discussion about agenda items. In order to facilitate this type of discussion, we have pulled specific topics, questions, and decision points from the meeting packet into this central discussion worksheet document. The intent of this document is to mirror the flow of the discussion and agenda items and should be used to collect your thoughts, comments, questions, and concerns on specific points.

*As you review the meeting packet contents prior to our meeting on **July 20 from 9am – 12pm**, please use this worksheet to take down notes or to formulate your questions for the project team. Due to limited discussion time at our meetings, please submit this as additional written feedback to the project team at the meeting as you see fit. Committee members will also be sent a link to a fillable version of this discussion worksheet as to collect additional questions or comments that may not have been expressed during the meeting.*

Thank you,



Ethan Stuckmayer

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HPSTAC Meeting Packet Item #5: Housing Production Strategy Report Structure and Requirements

[#1] A Regional Approach to Homelessness - DLCD has heard that a city’s obligation to provide housing for their homeless communities be directed from a regional level, rather than from a city level. Given that OHCS’ RHNA is only a prototype at this stage of rulemaking, and may not continue past the biennium, what systems can cities begin to put into place in order to adequately contextualize housing need on a regional level, as well as contribute to social and housing infrastructure that supports the homeless community?

[#2] Engagement - Significant additions to the Engagement section have been added in this version of HPS Report structure. Are there any big-picture ideas and/or questions that will need to be addressed as the HPS Report structure becomes finalized in the next draft? Additionally, is it appropriate to conduct engagement concurrent with other housing engagement efforts within a city? If so, what should be the time limit on incorporating past engagement findings?

[#3] Opportunity - Do the changes to the “Access to Opportunity” question better encompass the concept of “opportunity”? What language should we consider to ensure that the definition of “opportunity” is more clear, yet flexible enough to apply to various communities where opportunity may look different?

[#4] Gentrification/Displacement/Housing Stability - A question was developed in the “Achieving Fair and Equitable Housing Outcomes” section to directly address housing instability and areas vulnerable to displacement. How can this question be structured to best ensure that cities meaningfully mitigate vulnerabilities to gentrification, displacement, and housing instability? Should this question be consolidated with any of the other questions?

[#5] Housing Production Strategy Tools - A list of tools/actions/policies that a city may implement to facilitate the production of housing is being compiled at this link: https://docs.google.com/document/d/1wg091os-MPyOML3TYtKu01895xsi47ZMVOhp_18Am8E/edit. Please share this list widely with your networks. The goal is to provide as many possible housing production strategies as possible for future reference as cities begin adopting Housing Production Strategies. This list of strategies will be included in a DLCD guidance document published after rulemaking has concluded. What specific tools/actions/policies should be added to this list?

HPSTAC Meeting Packet Item #6: Reviewing and Enforcing the Housing Production Strategy Reports

[#6] Annual and Mid-Point Reporting - The department is finalizing the reporting structure for the Housing Production Strategy Program which will likely include a two-pronged approach with a data-heavy annual report built into the existing HB 4006 reporting requirement and a mid-HPS cycle narrative reflection. Are there any specific items not already discussed that you think the department should include as part of these reporting requirements?

[#7] Measuring HPS Progress - HPS progress will be measured by DLCD staff to ensure that cities are making good-faith efforts to create housing opportunity and address housing needs for the most marginalized of their communities. Though DLCD staff will not be looking at exact unit counts over a limited time frame, what attributes, in addition to the ones described in the Review and Enforcement Memo, should DLCD use to ensure progress in a city's HPS process is being made?

[#8] Measuring “Good Faith Effort” - What factors should DLCD and LCDC use to determine if a city is making a “good faith effort” to increase the production of housing in their city?

[#9] Enforcement – DLCD staff has developed a tiered, two-track enforcement approach for consideration by the HPSTAC. It was informed with feedback from the RAC as well as enforcement mechanisms outlined in House Bill 2003. Do the identified tiers provide a reasonable and sufficient progression of enforcement actions to provide local jurisdictions reasonable opportunity to comply? Are there specific details we should consider in refining these tiers?

Additional Comments

HOUSING PRODUCTION STRATEGY TECHNICAL ADVISORY COMMITTEE



MEETING PACKET #6

TO: Housing Production Strategy Advisory Committee (HPSTAC) Members

FROM: Ethan Stuckmayer, Senior Housing Planner; Samuel De Perio Garcia, Housing Planner

SUBJECT: Housing Production Strategy Report Structure Memo

Overview

The purpose of this memo is to provide an update for the Rulemaking Advisory Committee on the progress of the Housing Production Strategy Report Structure. This group is charged to outline a proposed organizational structure for the Housing Production Strategy (HPS) as required by HB 2003 for cities with a population greater than 10,000.

The goal is to have a standardized outline which jurisdictions can follow in drafting a Housing Production Strategy Report. This will ensure consistency of documents across jurisdictions for ease of comparison and evaluation. Furthermore, minimum compliance and guidance standards will be articulated through the rulemaking process in order to enforce what is required through HB 2003, as well as to convey additional, non-mandatory goals inspired by the bill.

We have incorporated changes to the Housing Production Strategy structure based on input from members of the HPSTAC and Rulemaking Advisory Committee (RAC). We are seeking feedback from TAC members on the report structure at the July 20 meeting to help guide ongoing refinement of the Housing Production Strategy structure. There will be a meeting on August 6 to provide any final feedback on the HPSTAC structure prior to submittal to the Secretary of State on August 28.

The goal for this memo is to:

- 1) Solicit feedback on the organizational structure and key elements of the Housing Production Strategies Report – the planning document that cities would ultimately create and submit to DLCD to fulfill the requirements of HB 2003

Updates on the HPSTAC Report Structure

Homelessness

Much conversation has taken place around the role of a Housing Production Strategy in identifying ways that cities should address housing their homelessness communities at all levels of housing. At the RAC meeting on June 9, Committee members overwhelmingly indicated that previously proposed requirements and guidance in these areas did not go far enough. Similarly, DLCD staff have had ongoing discussions with Oregon experts on homelessness research, the Fair Housing Act, and affordable housing. The Land Conservation and Development Commission has also indicated their interest in utilizing the Housing Production Strategy Program to achieve equitable housing outcomes for those who

experience disproportionate housing needs and to consider the housing needs of people experiencing homelessness.

Since the last HPSTAC meeting on June 18 there was discussion on providing housing for homelessness at all income levels, but to be directed from a regional level, for all housing types. Initially, this process was discussed in a manner that cities would be held solely responsible for providing data to track homeless counts, as well as provide social and housing infrastructure for homelessness. However, with many jurisdictions across the State facing limited staff capacity and/or limited access to data resources, HPSTAC members found this approach to be problematic. In addition, members voiced that there are nuanced needs among the homeless population that simply cannot be captured through easily-accessible, but still severely limited data. Rather, a regional approach was suggested, where cities would work to contribute to a regional housing need for homelessness.

NOTE: At the RAC meeting on July 14, members further clarified that local jurisdictions should use a baseline of specific data sources as available, to identify housing needs for those facing homelessness, and could further contextualize the need with other available data sources as they are available.

At the moment, OHCS is currently running a parallel project called the Regional Housing Needs Analysis (RHNA), with the intent to capture regional housing need data across housing types and income levels. The hope is that this project will continue past the biennium. Through this avenue, the RHNA may have the capacity to contextualize a regional homeless housing need, where cities will be asked to contribute to housing and social service infrastructure that best supports the regional homeless housing need total. A RHNA may have the ability to complement or fill in the data gaps where cities fall short. While homelessness data should inform policy and strategy consideration for a City undergoing an HNA or HPS, it has become evident that cities are not in positions to influence housing for homelessness entirely on their own. Comments have shown that cities throughout a region don't provide housing for homelessness at all the same rates, but all cities should have an obligation to meet the needs of the region.

Question #1: DLCD has heard that a city's obligation to provide housing for their homeless communities be directed from a regional level, rather than from a city level. Given that OHCS' RHNA is only a prototype at this stage of rulemaking, and may not continue past the biennium, what systems can cities begin to put into place in order to adequately contextualize housing need on a regional level, as well as contribute to social and housing infrastructure that supports the homeless community?

Engagement

Since the last HPSTAC meeting, there have been two primary concerns raised with regard to the HPS approach to engagement. The first is that, while the administrative rules should not be overly prescriptive in how engagement is conducted, there should be a clear expectation for local jurisdictions to critically think through and document how engagement is structured to provide meaningful opportunities for community engagement. To ensure this, specific questions have been formulated to assess **who** was engaged, **what** the local jurisdiction heard, how engagement **influenced** decision-making, and local jurisdiction **evaluation** of the engagement process.

Additionally, DLCD staff participated in a joint meeting with LOC on July 10 to talk with CDBG entitlement jurisdictions to identify how a Housing Production Strategy could better align with existing Consolidated Plan and Analysis of Impediments work. One key theme was that engagement should be

able to occur concurrently with this work, both because they share similar questions and objectives and many underrepresented communities are already engaged through these processes. Engagement fatigue was raised as a potential concern if layering an additional engagement process.

Question #2: Significant additions to the Engagement section have been added in this version of HPS Report structure. Are there any big-picture ideas and/or questions that will need to be addressed as the HPS Report structure becomes finalized in the next draft? Additionally, is it appropriate to conduct engagement concurrent with other housing engagement efforts within a city? If so, what should be the time limit on incorporating past engagement findings?

Access to Opportunity

The OHCS metric to identify Census Tracts as “Opportunity Areas” for the purpose of prioritizing LIHTC funding came under scrutiny at the last HPSTAC meeting. While some members felt that OHCS’ metric provided a clear criteria for jurisdictions to work towards, others felt that the specific metric reflects a narrow conceptualization of “opportunity” which can vary significantly between communities and entrenches existing patterns of disparity by failing to improve opportunity in areas that have experienced historic disinvestment.

To address both concerns, DLCD staff has developed a more specific question regarding “access to opportunity” providing more specific language on the meaning of “opportunity” (e.g. access high-performing schools, employment centers, and services), and abandoning the OHCS metric that focuses on areas. In this framing, a city can increase access to opportunity both by providing housing choice in high-opportunity areas *and* delivering greater opportunity to communities that have experienced disinvestment.

Question #3: Do the changes to this question better encompass the concept of “opportunity”? What language should we consider to ensure that the definition of “opportunity” is more clear, yet flexible enough to apply to various communities where opportunity may look different?

Gentrification and Displacement

There has been indications from members on both the RAC and TAC that as jurisdictions seek to encourage the development of needed housing through a Housing Production Strategy, they should also mitigate vulnerability to gentrification and displacement that can result from public investment and redevelopment in historically disinvested areas. To address this, DLCD staff has provided preliminary language addressing this issue. The Department is also in the process of contracting with Portland State University to develop guidance for jurisdictions on mitigating gentrification and displacement.

Question #4: How can this question be structured to best ensure that cities meaningfully mitigate vulnerabilities to gentrification, displacement, and housing instability? Should this question be consolidated with any of the other questions?

Housing Production Strategy Report Structure

Pursuant to HB 2003, cities over 10,000 will be required to submit HNAs on a fixed 6-8 year schedule. The HNA will require the local government to identify a housing need that will be expressed as a number of housing units by type and affordability.

Furthermore, cities with population over 10,000 will also be required to submit a Housing Production Strategy Report within one year of HNA adoption. In the HPS Report, the city will be required to identify strategies to support the development of the housing needs identified in the HNA over the 20-year planning period. The sum of all the strategies proposed by a city must collectively be the city's best attempt to respond to the 20-year housing need identified within the HNA.

This Housing Production Strategy Report will be comprised of a five main components:

1. 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 only calculate housing need by income group, the analysis often poorly estimates the housing needs of those experiencing homelessness. DLCD proposes that cities conduct an analysis of the specific housing needs of the homeless population as part of this component.
2. 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 needed 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.
3. 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.
4. Achieving Fair and Equitable Housing Outcomes describe 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, address the equitable distribution of services, and create opportunities for affordable rental housing and homeownership.
5. 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 reflection questions.

Minimum Compliance vs. Guidance

Continued conversation and discussion with both the RAC and the HPSTAC further assist the department in delineating the **requirements** of a HPS Report from the **best practices, guidance, or the “nice-to-haves”**.

As rulemaking progresses, the department proposes the following Housing Production Strategy Report structure which will allow for consistent reporting across jurisdictions and DLCD staff review – this is especially important in the *Contextualized Housing, Engagement and Strategies to Meet Future Housing Need, and Achieving Fair and Equitable Housing Outcomes* sections. This will help cities provide a baseline of information to DLCD staff, with the opportunity to establish non-mandatory best practices for Housing Production Strategy Report preparation.

Based on committee feedback, below is staff’s understanding of the HPS Report requirements and guidance thus far. Updates since the last RAC (7/14) and HPSTAC (6/18) meeting are shown in **red**:

Proposed HPS Minimum Requirements	Proposed Guidance/Best Practices
<i>Contextualized Housing Need</i>	
<p><i>This section will include a short narrative, largely pulled from the jurisdiction’s adopted Housing Needs Analysis (HNA). The findings of the city’s most recent HNA should be the primary source highlighting Identified Housing Need in a Housing Production Strategy Report.</i></p> <p><i>In adherence to HB 2003, Section 4(3), this section shall include consideration of:</i></p> <ul style="list-style-type: none"> • Socio-economic and demographic trends of a jurisdiction’s population; <ul style="list-style-type: none"> ○ Disaggregated by race • Measures already adopted by the city to promote the development of needed housing; • Market conditions affecting the provision of needed housing; and • Existing and expected barriers to the development of needed housing. 	<p><i>Because the HNA may not fully describe the housing need of a city, this section can include (to the extent possible), but is not to be limited to the following information for further contextualization of housing need:</i></p> <ul style="list-style-type: none"> • Percentage of housing stock that is market rate vs. subsidized; • Units that are in the development pipeline by housing type (part of HB 4006 produced and permitted reporting); • The proportionate population not typically accounted for in an HNA unique to city circumstances (i.e. student populations, second homeowners) • Redevelopment rates that may impact the provision of preserving existing affordable market-rate units.

Other housing needs to respond to for Department review under section 6, subsection 2 of HB 2003.

- Housing need for those experiencing homelessness:
 - To understand the need, a city **must use the following data sources, as available:**
 - **Regional homelessness housing need provided by state, regional, or county entity***
 - Point-in-time counts
 - McKinney-Vento data, **adjusted to reflect average family size**
 - **Data collected by Coordinated Care Organizations (CCOs)**
 - **Additionally, a jurisdiction may use the following data sources to further contextualize need:**
 - Capacity of existing shelters
 - Vacancy rates
 - Change in property values or rent over time
 - Qualitative data that illustrate specific needs of the homeless population
 - Other local houseless population datasets

- Percentage of Rent Burdened Households (furnished by Oregon Housing and Community Services)

- Housing by Tenure (owner vs renter)

** If RHNA or other mechanism provides such data or analysis.*

Engagement

This section describes engagement strategies employed to better understand housing needs and barriers to housing, for which audience, and why this audience is being engaged. Specifically, this section should include:

The city may also engage in other community outreach activities to better understand housing needs of specific populations. Cities are encouraged to convene a wide variety of stakeholders as part of advisory committees.

- **Summary of consumers of needed housing engaged during HNA** (i.e., local residents), how deeply city staff reached into and connected with under-represented communities and how the input from those communities translated into HPS actions; and
- **Summary of housing providers engaged during HPS development** (i.e., developers, social service providers) to better understand what providers require to build more of the needed housing and how that information translated into HPS actions;

This section should also include a discussion of how the city will utilize or alter actions to directly address issues or concerns raised throughout the engagement process, specifically, by answering the following questions:

- Who:** Who has been historically marginalized in city decisions, and how are you engaging them in the HPS? What policies or procedures have guided or constrained engagement of these communities in the past, and what input can you bring forward from other related conversations with these communities?
- What you heard:** What questions did you ask of each group (consumers of needed housing/housing producers)? What did they tell you? Report by stakeholder group.
- Influence:** How did the information and experiences of marginalized communities/housing providers influence the HPS? List specific examples.
- Evaluation:** Who did you have trouble engaging and why do you think that is? How can engagement processes be done differently going forward? Are there strategies stakeholders asked for, but could not be delivered? Why?

Engagement for a Housing Production Strategy may be conducted concurrent with other Housing

Cities are also encouraged to structure engagement in a manner that builds community buy-in through early and meaningful opportunities to influence the strategies a city considers. If a strategy requires tax funding, cities are encouraged to engage prospective taxpayers to improve the likelihood of success for a given measure.

Some ways cities may engage stakeholders could include, but not be limited to the following methods: open houses, public forums, online tools, and remote meetings.

Planning efforts within the jurisdiction, including Housing Needs Analyses, Consolidated Plans for CDBG Entitlement Communities, and public engagement for Severely Rent Burdened Communities.

Strategies to Meet Future Housing Need

This section will be comprised of a list of all the tools/policies/actions a city proposes to meet its Identified Housing Need. The tools/policies/actions that can be employed by cities can generally be categorized into seven categories:

- Zoning, Planning, and Code Changes
- Reduce Regulatory Impediments
- Financial Incentives
- Financial Resources (Local, State, Federal)
- Tax Exemption and Abatement
- Land, Acquisition and Partnerships
- Innovative Options

A city may employ any number of tools/actions/policies and is not required to employ a tool/action/policy from each or all of these seven categories. **However, the strategies proposed by a city must collectively be the city’s best attempt to respond to the 20-year housing need identified within the HNA, as one of many parties responsible for housing production, including federal, state, regional and county governments; affordable housing providers; and developers.**

For each tool/policy/action a city proposes in this section, the city must include:

- Description of the strategy,
- Timeline for adoption,
- Timeline for implementation, and
- Magnitude of impact, **to the extent known:**
 - Identified Housing Need being fulfilled (tenure and income);
 - Number of housing units that may be created, if possible;
 - An analysis of the income and demographic populations that will receive benefit and/or burden from the strategy, specifically:
 - Low-income communities
 - Communities of color
 - Other communities that have historically been discriminated against, including protected classes and

For the purposes of prioritization, cities are encouraged to organize tools/policies/actions in one or more of the following ways:

- Cost (low to high),
- Timeframe (short-term to long-term), or
- Identified Housing Need (most need to least need)
- Necessity analysis: The degree to which implementing this tool/policy/action is required in order to produce the needed housing type by income level.

This section may also include a narrative explanation of why it is necessary to prioritize the HPS Report in such a manner. The city can outline jurisdictional priorities and match tools/actions/policies to specific goals.

<ul style="list-style-type: none"> • Time frame over which the strategy is expected to impact needed housing <p>This section should also include a description of how proposed tools/policies/actions expand, alter, or interacts with other tools/policies/actions the city currently has in place or proposes to implement.</p>	<p>A City should also consider programs or mechanisms to track the progress and effectiveness of efforts to encourage the development of needed housing. Examples of information a City could consider tracking include:</p> <ul style="list-style-type: none"> • Anticipated affordability of new dwelling units upon issuance of a building permit • Net unit production, including units demolished or converted to nonresidential use through redevelopment
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Achieving Fair and Equitable Housing Outcomes

This section will include a series of questions that jurisdictions will be asked to reflect on, with regards to equitable outcomes when it comes to housing production. This will assist jurisdictions in framing their housing need, develop an appropriate engagement process going forward, and choose appropriate housing production strategies to address housing inequities. The questions are as follows:

- **Location/Transportation.** How is the city working with partners to locate housing and transportation networks so that all residents, including protected classes identified in Federal and Oregon State Fair Housing Law, have equal access to education and occupational opportunity?
- **Fair Housing.** How is your jurisdiction 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
- **Access to Opportunity.** How is the city **facilitating access to opportunity** for communities of color, low-income communities, **and other communities that have historically been locked out of opportunities?** Access to opportunity includes access to high-quality schooling, employment and business opportunities, community amenities and services, and a healthy and safe environment.
- **Homelessness/equitable distribution of services.** How is your jurisdiction ensuring that **services and shelters to support the homeless population are equitably distributed?**
- **Opportunities for affordable rental housing and homeownership.** How is your jurisdiction creating opportunities for both affordable rental housing and wealth creation via homeownership, especially for communities that have been historically locked out of these opportunities?

○ **Gentrification/Displacement/Housing Stability.** How is your jurisdiction increasing housing stability for residents and mitigating vulnerabilities of gentrification and displacement resulting from investment or redevelopment?

Conclusion

<p><i>This section will be a narrative illustrating next steps for jurisdictions and considerations for topics to reflect on for subsequent HPS Reports.</i></p> <ul style="list-style-type: none"> • In concluding the Housing Production Strategy Report, the city must consider the following: <ul style="list-style-type: none"> • Any opportunities, constraints, or negative externalities associated with adoption of the elements of proposed housing production strategies; • Actions necessary for the local government and other stakeholders to take in order to implement the proposed housing production strategy; and • Discussion of how the proposed actions, taken collectively, will increase housing options for population groups experiencing a current or projected disproportionate housing need. 	<p>The city may also consider conducting an Alternatives Analysis describing how the city came to propose a specific set of tools/actions/policies. This analysis can help cities make informed decisions on specific tools/actions/policies especially if there are intra-strategy options related to costs, regulatory standards, equity considerations, or other variables.</p>
<p>If this is the city’s first HPS Report, how will progress be measured going forward? If this is not the city’s first HPS Report, how have strategies documented in the most recent HPS been carried out? What were the results? What has worked? What hasn’t? Why or why not?</p>	<p>N/A</p>
<p>A Housing Production Strategy Report must include within its index a copy of the city’s most recently completed survey to meet the requirements of HB 4006 and a copy of the ORS 197.178 report, which shows all permits applied for and accepted within the year.</p>	<p>The city may also include any supporting documentation, research, or analysis that outlines the need for specific tools/actions/policies in the Report’s index.</p>
<p>If there is a housing need not being addressed, what is the need, why can the city not address this need, and what has been previously attempted in terms of tools/strategies/policies?</p>	<p>N/A</p>

<p>Reflection Questions for Each Jurisdiction. These are different from the aforementioned reflection questions, above, as they help inform the reasoning behind choosing housing production strategies. :</p> <ul style="list-style-type: none"> • How do the chosen housing production strategies help residents overcome discriminatory housing practices? • How do the chosen housing production strategies help residents overcome racial housing segregation? • How do the chosen strategies affirmatively further fair housing? 	

HOUSING PRODUCTION STRATEGY TECHNICAL ADVISORY COMMITTEE



MEETING PACKET #6

TO: Housing Production Strategies Technical Advisory Committee Members

FROM: Ethan Stuckmayer, Senior Housing Planner; Samuel De Perio Garcia, Housing Planner

SUBJECT: Reporting, Review, and Enforcement of the Housing Production Strategy Program

Overview

Now that the HPSTAC is finalizing discussion on the specific requirements of the Housing Production Strategy Report, focus is shifted to refining other provisions of the Housing Production Strategy program including how cities will report their Housing Production Strategy implementation progress, how the reports will be reviewed by the department, and what enforcement actions the department may take on cities that routinely do not meet review requirements.

We have included some discussion questions, which highlight key concepts for which the department seeks HPSTAC input during the July 20 meeting.

Reporting

At the last HPSTAC meeting on June 18, DLCD heard general consensus from the HPSTAC that HPS progress reporting for cities should be accomplished through a two-pronged approach – a number/data-focused annual report and a narrative mid-term reflection.

Annual reporting requirements will be accomplished through a process that expands upon the already-existing HB 4006 produced and permitted report. This report requires cities with populations greater than 10,000 to submit, by February 1 of each year, an Excel report to DLCD about the total number of housing units permitted and produced in the previous year.

NOTE: During the July 14 RAC meeting, a concern was raised that the HB 4006 reporting only captured the gross housing units produced and permitted. However, the most important aspect of this reporting is the net increase/decrease of housing units in a city over time. The HB 4006 report should be tweaked to understand both the production and removal of housing units.

Mid-term reporting, however, will occur on a 3 or 4-year cycle, dependent on the already-established HNA update schedule. This will take the form of reflection questions for cities. Cities will be asked to describe which tools/policies/actions they have adopted or implemented - or have plans to adopt or implement – since the adoption of their Housing Production Strategy. Cities should describe the circumstances that have prohibited or delayed the implementation of any tools/policies/actions as originally planned in the Housing Production Strategy Report. Lastly, cities will be asked to respond to questions related to housing location, affirmatively furthering fair housing, improving wealth outcomes

for marginalized communities through homeownership, and the equitable distribution of homeless services.

These questions are identified in the memo titled *Housing Production Strategy Report Structure*. They are as follows:

- **Location/Transportation.** How is the city working with partners to locate housing and transportation networks so that all residents, including protected classes identified in Federal and Oregon State Fair Housing Law, have equal access to education and occupational opportunity?
- **Fair Housing.** How is your jurisdiction 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
- **Access to Opportunity.** How is the city facilitating access to opportunity for communities of color, low-income communities, and other communities that have historically been locked out of opportunities? Access to opportunity includes access to high-quality schooling, employment and business opportunities, community amenities and services, and a healthy and safe environment.
- **Homelessness/equitable distribution of services.** How is your jurisdiction ensuring that services and shelters to support the homeless population are equitably distributed?
- **Opportunities for affordable rental housing and homeownership.** How is your jurisdiction creating opportunities for both affordable rental housing and wealth creation via homeownership, especially for communities that have been historically locked out of these opportunities?
- NOTE: *During the July 14 RAC meeting, the project team heard that the series of questions, while advancing the conversation on how cities are addressing issues of fair and equitable housing outcomes, the city was not asked to reflect on potential gentrification or displacement impacts of the policies they adopted. DLCD staff has added this reflection question as a result:*

Gentrification/Displacement/Housing Stability. How is your jurisdiction increasing housing stability for residents and mitigating vulnerabilities of gentrification and displacement resulting from investment or redevelopment?

Question #1: The department is finalizing the reporting structure for the Housing Production Strategy Program which will likely include a two-pronged approach with a data-heavy annual report built into the existing HB 4006 reporting requirement and a mid-HPS cycle narrative reflection. Are there any specific

items not already discussed that you think the department should include as part of these reporting requirements?

Review of the Housing Production Strategy Report

Under Section 6 of HB 2003, the Land Conservation and Development Commission shall adopt criteria for reviewing and identifying cities that have not sufficiently achieved production of needed housing within their jurisdiction or have not implemented their housing production strategy. While it will be the responsibility of cities to report on their efforts to stimulate housing production in their communities, DLCDC staff will be tasked to both review reports and determine whether or not cities are making good-faith efforts to address housing needs of their communities.

As discussed previously, this is measured in the knowledge that cities do not build housing units, and instead rely on the private or non-profit development to do so. However, cities play a major role to help increase unit development through their HPS actions.

HB 2003 offers some guidance on which metrics may be included in the Land Conservation and Development Commission's review of 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, a combination of items A – F will be used by the Commission as the review criteria. Additionally, item G provides the Commission the opportunity to add other review criteria.

The Commission has already identified two additional attributes that will likely be part of the sufficiency outline in Section 6 of HB 2003:

1. The city's response to address the housing needs of those experiencing homelessness, and
2. Increased access to housing opportunity including the elimination of barriers to flexible, fair, and equitable housing options.

Question #2: HPS progress will be measured by DLCDC staff to ensure that cities are making good-faith efforts to create housing opportunity and address housing needs for the most marginalized of their communities. Though DLCDC staff will not be looking at exact unit counts over a limited time frame, what attributes, in addition to the ones described above, should DLCDC use to ensure progress in a city's HPS process is being made?

Question #3: What factors should DLCDC and LCDC use to determine if a city is making a "good faith effort" to increase the production of housing in their city?

Enforcement

HB 2003, give LCDC and DLCD the authority to take enforcement actions upon jurisdictions that do not comply with the requirements of the HPS program. As discussed previously with the HPSTAC, enforcement actions will serve as a last resort mechanism to ensure cities are increasing the opportunity for housing production in their communities. HB 2003 was not specific on which enforcement actions the Commission or Department could take. Enforcement actions are not likely to be tied to a city meeting specific unit production goals, rather LCDC and DLCD seek to create incentives for good faith efforts to implement and adopt Housing Production Strategies. The enforcement actions should also outline the consequences for noncompliance, possibly including a process by which the department withholds planning and technical assistance funds from jurisdictions who routinely fail to adopt Housing Production Strategy Reports.

The project team is beginning to formulate the framework for these potential enforcement actions. The HPSTAC will have a longer and more detailed discussion on these items at the next meeting on July 20, however we seek additional guidance from the TAC on how to frame this discussion.

An initial thought on how to frame this section would be to define enforcement tiers, or, levels of action DLCD can take when cities are unable to accomplish good-faith efforts, or struggle to implement their HPS. If enforcement tiers are the approach, defining parameters of each level with regards to review criteria would also be necessary, as well as identifying a system that would help jurisdictions move between tiers. When cities have not adequately reached a specific tier consequences could also be framed, not just as disciplinary measures, such as withholding planning assistance funds, but can also be framed as supportive, such as assigning city staff to additional training related to fair housing or assigning additional DLCD staff assistance to a city.

As cities of various sizes vary with budget and staff time, it is important to note that strategies a city can focus on will also vary significantly, especially as local Councils may have competing priorities. With this in mind, DLCD staff would like to develop an enforcement process that propels cities to advance housing production without creating disparities between cities that do not have the resources to do so, even if they tried.

NOTE: Feedback from RAC members at the July 14 meeting suggested DLCD should take a two-track approach to HPS compliance, each with varying tiers of enforcement. One track would focus on the actual completion of an HNA and subsequent HPS according to the 6-8 year schedule required by law, while the other track would focus on enforcement related to adopting and implementing strategies identified in an HPS.

The tiered approach would provide a series of escalating responses by DLCD/LCDC, beginning with the provision of resources for jurisdictions with limited means and an opportunity to remedy noncompliance, then enhanced review with formal correction required (with clear actions and timelines defined), and finally enforcement via financial mechanisms of other consequences. They are outlined in greater detail below.

Enforcement

Adoption of an HNA and HPS	Adoption and Implementation of Strategies Identified in an HPS
<p>Tier 1: Assistance for jurisdictions with limited resources – Should a jurisdiction identify a deficiency of resources in advance of their deadline to develop and adopt a Housing Needs Analysis and/or subsequent Housing Production Strategy, they may reach out to the Department for assistance. The Department may take actions to support the jurisdiction in fulfilling its obligation such as prioritizing Technical Assistance funding. If a jurisdiction determines that it is unable to complete the work by the deadline, they may work with the Department to formulate a timeline to complete HNA or HPS work.</p> <p>Tier 2: HNA/HPS Delinquency – Should a jurisdiction fail to meet the required date to complete and adopt a Housing Needs Analysis or subsequent Housing Production Strategy without an established timeline for completion formulated with the Department, the Department will establish a timeline for the jurisdiction, with subsequent enforcement actions outlined on deadlines.</p> <p>Tier 3: Enhanced Review with Formal Correction – Should LCDC determine that a Housing Production Strategy fail to meet criteria for compliance with House Bill 2001, the local jurisdiction will engage in enhanced review in which the Department establishes a timeline to remedy identified deficiencies. Submitted products may be formally corrected.</p> <p>Tier 4: Financial Enforcement – Should a local jurisdiction fail to remedy delinquency or failure to meet criteria to comply with HB 2003, LCDC will withhold financial resources, such as technical assistance, from the local jurisdiction.</p> <p>Tier 5: Enforcement Order – Should a jurisdiction maintain outstanding or continued delinquency or failure to meet criteria to comply with HB 2003,</p>	<p>Tier 1: Jurisdiction Remedy – In the event that a jurisdiction fail to adopt or implement a strategy intended to meet an identified housing need within the HPS by the date specified within the HPS, a jurisdiction must notify the Department, including an explanation why the strategy was not implemented within the timeline specified within the housing production strategy.</p> <p>From there, the local jurisdiction may work with the Department to identify a strategy (or strategies) and timeline to address the identified need. This may include formulating an agreement with the Department, including a timeframe to remedy the issue. Additionally, the Department may assist compliance via technical assistance funding or direct support.</p> <p>Tier 2: Required Remedy – Should a local jurisdiction fail to establish a time frame with the Department or develop alternative an alternative strategy (or strategies) and timeline to address the identified need within the established time frame, the local jurisdiction will engage in enhanced review in which the Department establishes a timeline to remedy identified deficiencies. Submitted products may be formally corrected.</p> <p>Tier 3: Financial Enforcement – Should a local jurisdiction fail to develop a strategy within the time frame established by the Department, LCDC will withhold financial resources, such as technical assistance, from the local jurisdiction.</p> <p>Tier 4: Enforcement Order – Should a jurisdiction maintain outstanding or continued delinquency, LCDC will act under ORS 197.319 to 197.335 to require local jurisdiction compliance.</p>

LCDC will act under ORS 197.319 to 197.335 to require local jurisdiction compliance.	
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Question #4: The tiered, two-track enforcement approach is a first attempt at developing an enforcement structure. It was informed with feedback from the RAC as well as enforcement mechanisms outlined in House Bill 2003. Do the identified tiers provide a reasonable and sufficient progression of enforcement actions to provide local jurisdictions reasonable opportunity to comply? Are there specific details we should consider in refining these tiers?

Housing Production Strategies Real Estate Developer and Housing Experts Feedback - OPEN SOURCE DOCUMENT

DRAFT - July 14, 2020

Housing Strategy Guidance Document:

To assist cities in the creation and drafting of their Housing Production Strategy Report in compliance to HB 2003, the Department of Land Conservation and Development (DLCD) will provide a guidance document of housing production strategies a city could employ to facilitate housing production in their community. The document will contain a list of strategies assigned by categories (subject to change as rulemaking continues). Each strategy will include a brief overview of its intent and purpose as well as a projection of its expected impact by housing tenure and by income bracket.

As the city prepares a housing production strategy report, the city would review the guidance document to select specific strategies that work best for their community and that address their identified Housing Needs. The city would simply reference the strategy number when describing the adoption, implementation, and expected magnitude of impact of each strategy in their report.

FEEDBACK NEEDED: Please add Housing Product Strategies to the charts below in red. DO NOT delete any of the strategies added by other people. If you feel that you have a strategy that is similar to one that is already written but it needs correction, please add it as a separate strategy OR make edits in red. If wanted, please add your name and organization to the "Source" column of the strategy you recommend, that way we can reach out to you if we have any questions. Please feel free to pass on the google docs link to others that are engaged in the development process.

If you don't feel comfortable editing the document below, please send your comments to the following. END of feedback will occur **Friday, August 7, 2020**.

- Samuel Garcia - samuel.d.garcia@state.or.us
- Ethan Stuckmayer - ethan.stuckmayer@state.or.us
- Commissioner Hallova - ahallova@dlcd.state.or.us

Thanks. - Commissioner Anyeley Hallova, *Land Conservation and Development Commission*

Proposed Categories:

The proposed categories contain tools, strategies, or policies that are intended to:

1. Reduce financial and regulatory impediments to develop Needed Housing
2. Create financial and regulatory incentives for development of Needed Housing
3. Provide access to local, state, and federal resources
4. Other innovative housing production strategies

Category A	Zoning and Code Changes	These are strategies that a jurisdiction can take to proactively encourage needed housing production through zoning and code modifications. These strategies may also include regulations to ensure housing goals are met.
Category B	Reduce Regulatory Impediments	These strategies address known impediments to providing needed housing. These include but are not limited to zoning, permitting, and infrastructure impediments.
Category C	Financial Incentives	These are a list of financial incentives that jurisdictions can give to developers to encourage them to produce needed housing.
Category D	Financial Resources	These are a list of resources or programs at the local, state and federal level that can provide money for housing projects. The majority of these resources are intended to provide money for affordable housing projects.
Category E	Tax Exemption and Abatement	These are a list of tax exemption and abatement programs that are intended to encourage developers to produce housing.
Category F	Land, Acquisition, Lease, and Partnerships	These are strategies that secure land for needed housing, unlock the value of land for housing, and/or create partnerships that will catalyze housing developments.
Category Z	Custom Options	Any other Housing Production Strategy not listed in Categories A through F that the jurisdiction wishes to implement will be outlined in this section and numbered accordingly.

Note 1: The starred (*) strategies apply to the State of Oregon. These strategies have been suggested by the housing and development community but are not yet programs in place.

Note 2: Some of the strategies may not create an overall housing production increase however, they do increase or maintain housing for a specific affordability target or population.

Category A: Zoning and Code Changes					
#	Strategy	Description	Affordability Target	Tenure Target	Source (if available)
A1	Ensure Land Zoned for Higher Density is not Developed at Lower Densities	This strategy will work on establishing minimum density standards, updating development codes to prohibit new single-family detached housing in high density zones, and allow single-family detached homes in medium density zones only if they meet minimum density or maximum lot size requirements.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Morrow County HNA, 2017
A2	Zoning Changes to Facilitate the Use of Lower-Cost Housing Types	In many cities, towns, and counties, changes to local zoning policies can help to facilitate the development of lower-cost housing types, such as Accessory Dwelling Units (ADU's), manufactured homes, multifamily housing, micro-units, or single-room occupancy developments. Changes to local zoning policies can also help to facilitate the development of safe overnight sheltering options for unhoused residents, such as Safe Park programs, Conestoga Hut Micro-shelters, sleeping pod micro-shelters, and others. To increase the likelihood the market can produce lower-cost housing types, it is important to make them allowable as of right in all locations and neighborhoods. If not, still provide flexibility in zoning code to still issue variance or conditional use permits that allow deviations from existing regulations on a case-by-case basis.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingsolutions.org/act/housing-policy-library/zoning-changes-to-facilitate-the-use-of-lower-cost-housing-types-overview/zoning-changes-to-facilitate-the-use-of-lower-cost-housing-types/ Mikaila Smith, CSWA Providence Better Outcomes thru Bridges Program 971-276-1040
A3	FAR, Density, or Height Bonuses for Affordable Housing	FAR, density, and height bonuses for affordable housing developments. Note: FAR/density bonuses do not work if there is not adequate height to make additional development feasible.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	(Oregon Smart Growth)
A4	Housing Rehabilitation Codes	Housing rehabilitation codes (or rehab codes) are building codes designed to reduce the costs of renovating and rehabilitating existing buildings, thereby facilitating the continued availability and habitability of older rental housing and owner-occupied homes. This is especially helpful to facilitate conversion into multiplex housing.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingsolutions.org/act/housing-policy-library/housing-rehabilitation-codes-overview/
A5	Code Provisions for ADUs	ADUs are smaller, ancillary dwelling units located on the same lot as a primary residence. They are typically complete dwellings with their own kitchen, bathroom and sleeping area. Given that ADUs are usually built by individual homeowners with limited experience or financial resources, code provisions can have a significant influence on the feasibility of their development and enable more widespread production. For example, easing occupancy requirements, allowing more ADUs on a lot, and expanding maximum size requirements. Certain building and development code regulations can inadvertently drive up ADU construction costs. More flexibility in siting, design, construction and lower fees are also needed to achieve feasibility in many cases.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	http://www.ci.the-dalles.or.us/sites/default/files/imported/public_docs/PDFs/the_dalles_housing_strategies_report_final.pdf
A6	Broaden the Definition of Housing Type	Broaden the definition of "housing unit" to allow for more flexibility across use types. For example, SROs are not always allowed in certain residential zones. Including them in the definition of housing unit, or broadening the set of uses allowed across all residential districts, would allow for greater flexibility of housing type.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	

A7	Allow for Single Room Occupancy in Residential Zones	Allow for SRO, Adult Dorms, and Cohousing in all residential zones. Note: SROs may be favored due to their ability to serve more people for less cost; it is not always a better housing type for all populations. Considerations should be given to ADA accessibility when planning SROs.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
A8	Promote Cottage Cluster Housing	Cottage clusters are groups of relatively small homes typically oriented around shared common grounds with 4-14 homes typically between 1,000-1200 square feet in size. By further defining cottage cluster design and development standards, housing code can effectively address a predictable process for developers, and potentially encourage greater production for this housing type. Some examples may include: allowing for a wide range of sizes and attached/detached options for housing; not specifying ownership structure so that both renters/owners can live on the same cluster; ensuring that minimum site size, setbacks and building coverage requirements do not prohibit cottage cluster development on smaller lots; draft design requirements that ensure neighborhood compatibility, and efficient use of land, but are not so specific as to restrict the ability to adapt to varying neighborhood contexts. Other ideas include: uniformed codes, form-based codes, and allowing shared underground infrastructure when practical (e.g. sewer lines from each cottage can connect to one main that runs out to street, rather than 8 parallel lines out to street).	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of the Dalles Housing Strategy Report, April 2017 <i>(Ben Wilt, Construction Mgr. @ North Willamette Valley Habitat)</i>
A9	Short-Term Rentals Regulations	Short-term rentals can be seen as an investment strategy for small investors, but can also remove rental housing supply from the market, in effect driving up rent from the local housing market. To avoid this effect, regulations can include definitions for various forms of short-term rentals, defining use, and occupancy standards, and even adding limits to the number of days that a short term rental can be in operation in order to mitigate their impact on the local housing market. Short Term Rental Regulation should begin with/include registration requirements for all short term rentals.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Morrow County HNA, 2017
A10	Inclusionary Zoning	Requiring that a portion of the units within a market rate development be set aside as affordable housing. This tool will often be combined with property tax exemptions, fee waivers, or development bonuses to offset the cost of affordable housing units. Careful consideration should be employed when enacting inclusionary zoning. Note: A number of studies, including those analyzing the IZ Ordinance in Portland, have shown that IZ suppresses, rather than increases, the creation of new housing. Given that, if IZ is proposed, the financial components need to be calculated right to ensure that the inclusionary rate is not too high for the offsets provided and that overall housing production increases as a result.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
A11	Add Restrictive Covenants to Ensure Affordability	Adding restrictive covenants to ensure affordability over time at a certain income level for affordable housing developments. Restrictive covenants are usually placed on a property in exchange for a local or state government providing financial contribution to the project. These covenants work best over the short-term (up to 30 years); after that they become unable to accommodate changed circumstances.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	

A12	Align Lot Division Density with Zoning Density	Sometimes there are conflicting regulations between the density that is allowed by the zoning code versus the density that is allowed when lot division (for fee-simple lots) is considered. This can cause unintentional reductions in density, only caused by the fact that the developer would like to create for-sale housing on fee-simple lots. Ideally, the densities would be aligned, so there is not a density reduction between - condominium versus fee-simple developments.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	(Anyeley Hallova)
A13	FAR & Density Transfer Provisions	Enable and encourage Transfer of Development Rights (TDR) to maximize available Floor Area Ratio (FAR) provided public benefit (e.g. historic preservation & affordable housing) are attained and covenants ensure long term benefit. This strategy assumes that there are adequate, realistic, and relatively easy receiving areas for TRDs.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	(BRIDGE Housing)
A14	Re-examine Requirements for Ground-floor Retail/Commercial	Critically re-assess requirements for ground floor retail; lively streetscape is a worthy goal, but not for every street. Jurisdictions can inadvertently impose massive costs on developers by requiring ground floor retail and commercial space even when it's unlikely to be fully occupied or generate nearly enough revenue to pay for itself. Ground floor uses should be driven by market demand; with residential use more beneficial to meet needed housing in some cases (eg. affordable housing).	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Bend
A15	Encourage Diverse Housing Types in High-Opportunity Neighborhoods	Enable developments that support multiple unit sizes, types, and tenure options to promote diverse housing options in high-opportunity neighborhoods. With a goal of reversing historical patterns of racial, ethnic, cultural and socio-economic exclusion. Use an analysis of "Access to Opportunity" to decide which zones or locations (via zoning overlay) to determine where this is appropriate. Goal is to promote access to opportunity (e.g., high performing schools, multiple transportation options, services, etc.) to households with a range of backgrounds and incomes. The jurisdiction could pare this strategy with a robust program of incentives (e.g. deeper financial incentives, greater range of housing types, more regulatory waivers, etc.) to be made available in these areas than in other areas of the city.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	(Commonworks Consulting)
A16	Manufactured Housing Community Preservation Zone	Change the zoning of existing manufactured housing communities to be preserved to a single-use zone that only allows manufactured housing communities. Consider lifting restrictions of stick-built homes in cooperatively-owned and other manufactured homes.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Portland http://opb-imgserve-production.s3-website-us-west-2.amazonaws.com/original/901_exhibit_b_recommended_draft_1534960268770.pdf (Commonworks Consulting) (Rick Rogers, ED @ Newberg Habitat/mayor of Newberg)
A17	Small Dwelling Unit Developments	Allow a land division where small lots or parcels are created below the standard lot/parcel size for dwelling units that are limited in size. Calculate density differently for the dwelling units due to their limited size. Density example: a. Dwelling units 600 square feet or smaller: 0.25 of a dwelling unit. b. Dwelling units 601 to 1,200 square feet: 0.50 of a dwelling unit.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Bend
A18	Increase Density near Transit	Adopt increased density codes by right near transit stations, with higher levels of density near high capacity/high frequency stations, then stepping back into	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI)	For Rent For Sale	(Oregon Smart Growth)

	Stations and Regional Multi-use Paths/ Bike - Pedestrian Trails	residential areas. <i>One step further--automatically upzone based on transportation corridor classifications (meaning wider ROWs get more flexibility in land use by right). This will add some flexibility for new transit stops (many of which, outside of Portland, will be bus stops). But be careful not to word the language so that people incorrectly assume that the density can only come after the transit has been put in place (a constantly moving goalpost).</i>	Workforce (80-120% AMI) Market Rate (> 120% AMI)		<i>Daniel Mckenna-Foster, Housing Planner</i>
A19	Community Benefits District	Some localities anticipating increases in density or intensity of uses by plan and land use changes or new public works (e.g., transit stations) can consider both concomitant obligations to those changes to require, either directly or through “sweeteners” that the developer fund certain community improvements (beyond sidewalks and flowerpots). Those obligations may include minimum densities, set asides (with sweeteners in this case), and payment of a tax on the increment of profit realized when the land use change or public work is accomplished. <i>Note for Discussion: Likely impossible to determine what a tax on profit would be for a developer. Likely need a better way to define this strategy, if it stays. Should this be in the financial resources section? What is the purpose of this strategy when it comes to housing production? Not clear.</i>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	<i>(Ed Sullivan)</i>
A20	High Density Requirements for to-be-Annexed Land	Requiring a certain portion of to-be-annexed land to include a percentage of high density. <i>Counterpoint. This seems susceptible to use as a means for penalizing new annexations and offloading density to the periphery. High density developments are most suitable in areas with existing infrastructure, and building more units in a low density context will either strand residents away from jobs/services or essentially indenture them to the use a motor vehicle as part of their daily lives. It seems this approach could be used as a way for low density areas in high-infrastructure locations to shirk responsibilities to upzone.</i>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Newberg <i>(Rick Rogers, ed at Newberg Habitat (also mayor of Newberg)</i> <i>Daniel Mckenna-Foster, Housing Planner</i>
A21	Pre-Approved Plan Sets for Middle Housing Typologies	Providing a pre-approved set of plans for middle housing typologies (ex. Cottage clusters, townhomes, and SROs). The plans would be highly-efficient, designed for constrained lots and low cost solutions, and would allow for streamlined permitting. This would help attract developers that typically develop only single-family housing to get into the missing middle housing production. Consider partnering with a university, design institution, or developing a competition to produce plans.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	<i>(Ben Wilt, Construction Mgr. @ North Willamette Valley Habitat)</i>
A22	Pre-Approved Plan Sets for ADUs	Provide a pre-approved set of plans for ADU designs (6-10 sizes/configurations) that, if chosen by a developer/owner, would lead to automatic approvals and reduced permitting schedule. Plans would reduce the need for architectural costs and reduce barriers to entry.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	

A23	Incentive-Based Approach	<p>An incentive-based approach would provide a better path to increase housing than IZ.</p> <p>Note: Ask Ezra Hammer to expand on the above. He put this note under IZ but it should be a separate strategy.</p>			<p><i>Ezra Hammer, Home Builders Association of Metropolitan Portland</i></p>
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Category B: Reduce Regulatory Impediments

#	Strategy	Description	Affordability Target	Tenure Target	Source (if available)
B1	Remove or Reduce Minimum Parking Requirements	<p>Removing parking requirements for residential uses provides the opportunity to reduce the amount of lot area used for pavement and provides more space for housing and open space. This strategy offers greater flexibility to site housing and reduces costs associated with providing parking. Allow developers to respond to market demands and transit access without having the burden of parking minimums. Consider removing parking requirements near transit or for affordable housing.</p> <p>To take this further, there could be a discussion that it is not appropriate to include minimum parking requirements in discussions of housing production at all because 1) housing and driving are not inherently related (people <i>choose</i> to drive based on infrastructure, the land use of housing doesn't "generate" trips), and, 2) mandating vehicle storage off-street is not an effective means of regulating space on-street.</p> <p>As a means of getting there, perhaps it would be possible to disentangle land uses from vehicle trip predictions: Still require new developments to predict how many trips their future residents/patrons might make, but do not cement these as vehicle trips. Allow the developer (or existing community plans) to determine what modes would be preferable and build out new infrastructure to reflect <i>this</i>, rather than automobile infrastructure by default. For example, if a developer wishes to build a 4 plex for people with impaired vision, they can take a prediction that people living there will make 20 trips per day, and then select to build walking or other infrastructure to accommodate that. Trips will be accommodated, but according to choice or community values.</p>	<p>Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)</p>	<p>For Rent For Sale</p>	<p>City of Tigard</p> <p><i>Daniel Mckenna-Foster, Housing Planner</i></p>
B2	Remove Development Code Impediments for Conversions	<p>Streamlining the conversion of larger single-family homes into multi-unit dwellings (e.g. duplex or triplex). This should be aligned with reduced off-street parking requirements, so that conversion doesn't trigger the need to add additional driveways (or isn't halted by inability to add additional driveways).</p>	<p>Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)</p>	<p>For Rent For Sale</p>	<p>City of Tigard</p>
B3	Expedite Permitting for Needed Housing Types	<p>Expedited permitting will help to reduce costs of development of Needed Housing as identified by the City. Consider projects with direct or indirect funding from local government as essential and projects with long term affordability covenants through tax abatement or inclusionary requirements as high priority and/or only</p>	<p>Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)</p>	<p>For Rent For Sale</p>	<p>City of Portland (direct funding only)</p>

		expedite housing according to the jurisdictions identified needed housing types. Local governments might also consider assigning a designating staff to shepherd projects through the construction process in order to expedite that part of the process.			
B4	Expedite Lot Division for Affordable Housing	Expedite lot divisions and subdivisions for affordable housing projects	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
B5	Reduce Regulatory Barriers to Lot Division	Remove barriers such as minimum street frontage, driveway requirements, etc., that impact minimum lot size/density during lot division. Preferably allow by-right lot division up to max number of units allowed. <i>If applicable, require that minimum densities are based on gross and not net area, consider prohibiting low block perimeter maxima.</i>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	<i>Daniel Mckenna-Foster, Housing Planner</i>
B6	Streamline Permitting Process	In some cities, towns, and counties, the process associated with obtaining approval for new construction is so time-consuming or costly that it dampens the amount of new development and adds significantly to its costs. To help streamline the process, cities, towns and counties can initiate a comprehensive review of all steps in the development approval process to identify the factors that most significantly suppress new residential construction and redevelopment. With a clearer picture of the obstacles, local leaders can then begin to assess whether they can be reduced or eliminated to stimulate development activity. In doing the comprehensive review, it is critical that actual timeline performance be evaluated not just the planned timeline.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingsolutions.org/act/housing-policy-library/streamlined-permitting-processes-overview/streamlined-permitting-processes/
B7	Flexible Regulatory Concessions for Affordable Housing	Often, nonprofit housing developers and housing agencies face regulatory impediments to building affordable housing, which can often derail projects. This strategy provides a flexible framework for delivery of affordable housing including but not limited to reduced minimum setbacks, height bonuses, and/or allowing for flexibility in how units are delivered. This strategy is not intended to allow for a lower quality for affordable housing buildings.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Morrow County HNA, 2017
B8	Waive Some Off-Site Infrastructure Requirements for Needed or Affordable Housing	Waive infrastructure build-out requirements for infill affordable or needed housing projects constructed in neighborhoods without a network of those amenities currently. Example: Waive requirements for curb, gutter and sidewalk build-out on the lot if it is located in an area without either connecting curb, gutter, and sidewalk currently or viable plans for funding infrastructure construction within the next decade. This is especially relevant in smaller, more rural locations.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Clackamas County Housing Report (<i>Commonworks Consulting</i>)
B9	Capital Improvements Programming (CIP)	Programming work in a Capital Improvements Programming (CIP) so that projects are constructed sooner to support development of middle housing or to open up more land in an Urban Growth Boundary (UGB) for development of middle housing. Coordinate housing planning with CIP work to prioritize those projects that would support development (e.g. new water line, sewer pumping station). If the UGB is amended or the premises on which the CIP were based changed substantially, the CIP should be revised.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	

B10	Public Facility Planning	Completing water, sewer, and transportation PFPs and getting capital improvement projects (CIP) built so that costs to develop on land zoned for needed housing can be further anticipated and supported. In addition, public utilities planning also allows for more unit capacity, especially in areas that are upzoned for denser housing.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Tigard City of Bend
B11	Pro-Housing Agenda	Change the culture of Planning / Development Services departments to have a pro-housing agenda for both rental and homeownership. Supplement with fair housing education and education on the supply and demand impact on housing prices. The State could support jurisdictions in this effort by providing an incentive (e.g. funding set-aside) for jurisdictions that adopt aggressive pro-housing policies. In the State of California housing funds are prioritized for cities that adopt pro-housing policies. Though it may be counterintuitive, since this allows anti-housing cities to avoid housing altogether. Alternatively, the State of Oregon could consider a stick rather than carrot approach (e.g. withholding highway funds).	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
B12	Pro Affordable Housing Agenda	<p>Change the culture of Planning / Development Services departments to have a pro Affordable Housing agenda for both rental and homeownership. Supplement with fair housing education and education on the supply and demand impact on housing prices. The State could support jurisdictions in this effort by providing an incentive (e.g. funding set-aside) for jurisdictions that adopt aggressive pro Affordable Housing policies. This agenda should include a plan to ensure that affordable housing is not suppressed in single-family zones or in wealthier communities.</p> <p><i>As part of this, encourage departments to look closely at how existing approaches may inadvertently favor one type of tenure over another, and scrutinize institutional biases that favor homeownership in single family homes. For example, offer the same AMI% to both renters and homeowners--not up to 80% for one and 120% for the other.</i></p> <p><i>Another point might be: discourage the use of "affordable" when talking about housing discussions. Current discussions of "affordable" housing mask the reality that just about all types of housing (including high-cost single family) receive some kind of federal, state, or local benefit/subsidy (mortgage interest deduction, value-insurance via low density zoning, etc). Many "affordable" housing discussions relegate the problem to a place outside of "regular" housing. If we remove "affordable" from every discussion and just say "housing" instead, all of a sudden it is a lot clearer where the impediments are. Not saying that there is not a need for direct subsidies for housing below a certain income level, but rather that "affordable" is no longer a meaningful term. The Planning Director from the City of Tigard has done some great work on this.</i></p>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	<p><i>(Ed Sullivan)</i></p> <p><i>Daniel Mckenna-Foster, Housing Planner</i></p>
B13	Align Bike Parking Requirements with Actual Use	<p>Require bicycle parking requirements more in line with actual use. Example: No more than 1-1.5 bike parking stalls per unit.</p> <p><i>Counterpoint: required bicycle parking suffers from the same causality problem as motor vehicle parking--they obscure how people make travel decisions. However, as an explicit policy choice to encourage biking, bicycle parking should be encouraged--but this also means that motor vehicle parking is in the same way an</i></p>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale Include for sale also. Regulations should be equal.	<i>Daniel Mckenna-Foster, Housing Planner</i>

		explicit policy choice to encourage driving.			
B14	Adopt Affirmatively Furthering Fair Housing as a Housing Policy in Comprehensive Plan	<p>Amend the comprehensive plan to explicitly make Affirmatively Furthering Fair Housing a Housing Policy. Example below, based on federal guidance on affirmatively furthering fair housing and current state protected classes. Jurisdictions may add additional protected classes, such as ancestry, ethnicity, or occupation.</p> <p>Add income level as a protected class.</p> <p>Housing Policy x: Affirmatively Furthering Fair Housing</p> <p>[Jurisdiction] affirmatively furthers access to decent, affordable housing with convenient access to the services and destinations Oregonians need to thrive without regard to their race, color, religion, national origin, sex, familial status, mental or physical disability, source of legally-derived income, marital status, sexual orientation or gender identity.</p> <ul style="list-style-type: none"> x.1 Address patterns of integration and segregation x.2 Address patterns of racially or ethnically concentrated areas of poverty x.3 Address disparities in access to opportunity x.4 Address disproportionate housing needs of residents based on race, ethnicity and disability status x.5 Adopt an equity lens inclusive of the classes identified in Housing Policy x above in making land use, planning and housing policy decisions <p>Additionally, a jurisdiction will create an Analysis of Impediments to Fair Housing (AI), even when not required, and conduct fair housing training for Council, Planning Commission, and other relevant policymakers.</p> <p>Excellent. Make known evidence and best practices for planning to reverse discrimination and exclusion as well as concentrations of wealth a required aspect of every community's comp plan process.</p>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	(Commonworks Consulting) Daniel Mckenna-Foster, Housing Planner
B15	Reduce the Power of NIMBYism to stop, slow, change, or reduce affordable housing	<p>Many jurisdictions and perhaps state law give communities/ neighborhoods too much veto power on both zoning policy, and particular project proposals. This essentially allows gentrifiers to move in, raise prices, and then keep others who they don't approve of from moving in.</p> <p>Dedicate funds to educate citizens on poverty, exclusion, and racial dynamics. Remove policies that allow neighborhood opposition to evidence based zoning proposals and individual projects. Decisions about what kind and how much housing goes where needs to be data-driven and done at the city level (see previous item), focused on equitable outcomes instead of best outcomes for those with the most money and privilege.</p>			(nate@inkbuiltdesign.com)
B16	Holistic planning to distribute new density more equitably	<p>Geography is often at odds with social equity; natural beauty is often in wealthy neighborhoods, as are historic buildings, allowing them to exclude new development and affordable housing. There needs to be a very targeted, carefully modeled design to zoning density planning based on balancing equity factors, access to quality schools, access to natural resources, etc. Distribute transit equitably as well to ensure that exclusionary neighborhoods don't remain that way</p>			(nate@inkbuiltdesign.com)

		because they don't offer transit for higher density housing.			
		<p>1. Don't not require, with infill development, that existing sidewalks are reset in accordance with "current" standards. (Sort of related to B8)</p> <p>2. Remove requirements for on-site common/active open space. Instead, ensure that adopted Parks plans fully consider the needs of every neighborhood, and that Cities are actively working toward satisfying those needs.</p>			Daniel Mckenna-Foster, Housing Planner

Category C: Financial Incentives

#	Strategy	Description	Affordability Target	Tenure Target	Source (if available)
C1	Reduce or Exempt SDCs for Needed Housing	Reducing, deferring, and/or financing System Development Charges (SDCs) at a low interest rate for needed housing types. This strategy reduces development costs.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Tigard
C2	Modify SDC fee schedules	<p>Updating SDC fee schedule so that is tied to dwelling size. This strategy ensures that smaller dwelling sizes in single and multi-family housing are not disproportionately burdened by fees and therefore encouraged. Consider per square foot fees rather than per dwelling.</p> <p>Tie transportation SDCs to the number of parking spaces, as the number of parking spaces is a much more accurate predictor of the number of trips that will start or end at every development. By tying transportation costs directly to vehicle storage, the system will both be assessing transportation impacts fairly and encouraging alternate modes of transportation.</p>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	<p>City of Florence https://www.ci.florence.or.us/sites/default/files/fileattachments/building/page/916/sdc_fy_19-20_rework_v2.pdf</p> <p>Daniel Mckenna-Foster, Housing Planner</p>
C3	Reduce or Exempt SDCs for ADUs	Waivers/reductions of SDCs for ADU production in order to improve the feasibility of the development. Create a model ordinance for the waiver, or deferment, of SDCs. Scale SDCs based on size, resource efficiency, and access to alternative transportation.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Portland (Ben Wilt, Construction Mgr. @ North Willamette Valley Habitat)
C4	Incentivize Manufactured and Modular Housing	<p>Give Bonus Density Incentives for manufactured and factory built housing. Consider tying bonus to modular housing that demonstrates if the housing shows a reduction of pricing when compared to a conventionally built building.</p> <p>I think this is problematic in a number of ways. The cost to build is independent of the price at which units are sold/rented (market demand). Construction cost has a larger bearing on when/where/if housing gets developed based on the potential profit a developer can make.</p>	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Metro King County RMHP
C5	Waive or Finance Park Impact Fees for Affordable Housing	A policy providing for the exemption (preferred) or financing park impact fees (helpful) for affordable housing ensures a mix of affordable housing. Financing the fee while still collecting can mitigate the cost of the fee to coincide with the available cash flow of the affordable housing.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Tualatin Hills Park & Recreation District
C6	Publicly Funded	Fund off-site improvements for workforce or affordable housing; e.g. street	Publicly-Subsidized (< 30% AMI)	For Rent	

	Infrastructure Improvements	intersection improvements triggered by development.	Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Sale	
C7	Reconsider Applying Park SDCs	If there are appropriate levels of parks and open space near the project, these impact fees should not be charged or should be assessed at a much lower rate. They are not general funds to be allocated without a nexus to the development.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	(Oregon Smart Growth)
					(nate@inkbuiltdesign.com)

Category D: Financial Resources

#	Strategy	Description	Affordability Target	Tenure Target	Source (if available)
D1	Community Development Block Grant (CDBG)	CDBG Grants are federal funds set aside in the form of grants to be used to meet national objectives: direct benefit for low and moderate income households; benefit to predominantly low income areas; elimination of slums and blight. Eligible activities include public works infrastructure, community facilities, new housing development, housing rehabilitation, and public services (counseling, social services & microenterprise training, including short-term emergency rent assistance). Eligibility is based upon the levels of low- and moderate-income families that may benefit from services provided by the eligible projects. While Cities can choose not to apply for CDBG, control of whether or not they receive CDBG is ultimately at the Federal level and like the State of Oregon, these funds can be used for things that have little to do with housing, so may have limited impact. A better gauge may be HOW cities use their CDBG; for housing benefit or other.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Tigard City of Eugene City of Beaverton City of Hillsboro City of Gresham City of Portland City of Bend City of Redmond State of Oregon
D2	Low Income Housing Tax Credit (LIHTC)	Federal tax provision that encourages private investment in affordable rental housing by providing qualified investors with a dollar-for-dollar reduction in federal income tax liability in exchange for investment in qualifying new construction and rehabilitation projects. LIHTCs may also be paired with Tax Exempt Revenue Bonds.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/low-income-housing-tax-credit-overview/
D3	Housing Trust Funds	Housing Trust Funds are a flexible source of funding that can be used to support a variety of affordable housing activities. Because they are created and administered at the city, county, region, or state level, housing trust funds are not subject to the restrictions of federal subsidy programs and therefore can be designed specifically to address local priorities and needs. The entity administering the fund determines eligible activities, which can include anything from emergency rent assistance for families facing the threat of eviction or homelessness to gap financing for new construction of affordable housing to repairs for older homeowners.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/housing-trust-funds-overview/
D4	Operating Subsidies for Affordable Housing Developments	Operating subsidies are payments made annually (or more frequently) to owners of affordable housing developments that make the housing more affordable by covering a portion of the ongoing costs of operating the development.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/operating-subsidies-for-affordable-housing-developments-overview/
D5	Employer - Assisted Housing	Employer-assisted housing programs provide a channel through which employers can help their employees with the cost of owning or renting a home, typically in	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/employer-assisted-housing-overview/

	Programs	neighborhoods close to the workplace. Assistance may be provided in a variety of ways, including through down payment grants or loans that are forgiven over a period of employment, homeownership counseling and education, rental subsidies and, less commonly, direct investment in the construction of rental housing.	Workforce (80-120% AMI) Market Rate (> 120% AMI)		y-library/employer-assisted-housing-programs-overview/
D6	HOME Program	HOME is a federal program established by Congress in 1990 that is designed to increase affordable housing for low- and very low-income families and individuals. All States and participating jurisdictions receive HOME funds from HUD each year, and may spend HOME on rental assistance, assistance to homebuyers, new construction, rehabilitation, improvements, demolition, relocation, and limited administrative costs.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
D7	Dedicated Revenue Sources for Affordable Housing	A dedicated revenue source for affordable housing provides an ongoing committed stream of revenue for affordable housing, often deposited into a Housing Trust Fund. This can be helpful in increasing the total funding available for affordable housing. The fund can receive its sources from: Transient Lodging Taxes collected from Short Term Rentals, developer fee and real estate transfer taxes (<i>not constitutional in Oregon</i>).	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/dedicated-revenue-sources-overview/ City of Portland Housing Investment Fund
D8	Demolition Taxes	Cities, towns, and counties establish demolition taxes and condo conversion fees as a way to generate revenue and replace affordable housing lost to these activities. The proceeds from both demolition taxes and condo conversion fees are typically deposited in a Housing Trust Fund to support affordable housing activities. To ensure that a demolition tax on residential development does not deter needed redevelopment - this strategy should only be applied if the housing replacement is 1:1. If the proposed development is more dense than the original structure, there should not be a demolition tax.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/demolition-taxes-and-condominium-conversion-fees-overview/
D9	Construction Excise Tax (CET)	A Construction Excise Tax (CET) is a tax on construction projects that can be used to fund affordable housing. According to state statutes, the tax may be imposed on improvements to real property that result in a new structure or additional square footage in an existing structure.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Portland City of Eugene City of Sisters
D10	Tax Increment Financing (TIF) Set-Aside	Create a TIF set-aside for affordable housing development programs within designated Urban Renewal Areas (URAs). Target could be to begin setting aside funds for affordable housing projects as a medium-term action, over the next 5 years or so. For example: Portland City Council designates 45% of the gross amount of TIF for designated housing purposes (rental housing for households under 60% of Area Median Income (AMI) and homeownership for households under 80% of AMI).	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Portland
D11	Flexible Use of Housing Choice Vouchers	Public Housing Authorities have the ability to attach up to 20% of their voucher assistance to specific housing units for each low income housing project, up to 25% of any single project. Project-Based Rental Assistance (PBRA) vouchers provide rental assistance for eligible individuals and families who occupy specific housing units managed by private owners who have entered into agreements with a housing agency. The household pays an established amount to the owner each month (typically approximately 30% of monthly income) and the housing agency pays the balance of the rent due. If public housing authorities include homeownership in their administrative plan, housing vouchers may also be used to facilitate low income homeownership.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/project-basing-of-housing-choice-vouchers-overview/

D12	Targeted Vouchers	Vouchers that target renters at the 60-80% AMI who are often left out of the housing funded by bond funds and other public sources that are focused on lower income levels. Housing Authorities use affordable housing dollars and issue vouchers that are good for one year and pay any landlord the difference between what the tenant can afford and market rent. This takes the reporting burden off the landlord and essentially allows any existing unit to be affordable. Each year the tenant would have to prove to the Housing Authority if they were still income qualified and if not.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
D13	Low-Interest Loans / Revolving Loan Fund	Housing Repair and Weatherization Assistance for low and moderate income households may be capitalized by Tax Increment Financing (TIF), Community Development Block Grant (CBDG) Funds, or local Housing Trust Funds.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Portland
D14	Eviction Prevention Programs	Eviction Prevention Programs provide financial assistance to help renters facing eviction stay in their homes. These programs are generally designed for families who are being evicted due to nonpayment of rent during or following an unforeseen crisis, such as job loss or serious illness, rather than those who face more persistent affordability challenges. Jurisdictions may be interested in investing in eviction prevention to address concerns about displacement of low-income renters and also to avoid or reduce use of other more costly local services, like homeless shelters.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingolutions.org/act/housing-policy-library/eviction-prevention-programs-overview/
D15	Bond - for Resident Support Services and Permanent Supportive Housing Services	Limited Tax General Obligation Bond that creates a funding source for supportive housing services, such as access to health care, mental health, and other social services that better support and stabilize residents who face complex challenges and will benefit from affordable housing programs.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Oregon Metro City of Portland
D16	General Obligation Bonds – for Affordable Housing	Following the passage of Measure 102 Oregon local governments, including cities and counties, can now issue voter-approved general obligation bonds to provide direct funding for construction and other capital costs associated with the development and construction of affordable housing. These funds can be loaned or granted to both public and privately owned affordable housing projects. “Affordability” is required to be determined by voters and each jurisdiction, and can be above or below minimum affordability levels established for the federal LIHTC program and other established federal and State affordable housing finance programs, defining affordability by reference to Area Median Income (AMI) as established by HUD. The bonds could be paired with other financing such as Low Income Housing Tax Credits, or could be used for homeownership opportunities.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Oregon Metro City of Portland https://ballotpedia.org/Oregon_Measure_102,_Removes_Restriction_that_Affordable_Housing_Projects_Funded_by_Municipal_Bonds_be_Government_Owned_(2018)
D17	Use IHBG funds for Urban Native Americans	Mixing of Indian Housing Block Grants (IHBG), typically used for housing for Native Americans on reservation land, with other traditional affordable housing funding sources allows preference for Native members in urban affordable housing projects.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	NAYA and CDP and Confederated Tribes of the Siletz
D18	Weatherization Funds through Community Action Agencies	Use weatherization funds administered by statewide network of Community Action Agencies to preserve aging housing stock occupied by income-qualified residents.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.oregon.gov/ohcs/Pages/low_income_weatherization_assistance_oregon.aspx (Commonworks Consulting)

D19	Transit-Oriented Development Grants	Provide financial incentives to developers to create transit-oriented communities. Funding can be used for site acquisition, infrastructure projects and residential/mixed-use projects.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.oregonmetro.gov/tools-partners/grants-and-resources/transit-oriented-development-program (Oregon Smart Growth)
D20	Local Innovation and Fast Track (LIFT) Program for Affordable Rental Housing Development	The Local Innovation and Fast Track (LIFT) Housing Program's objective is to build new affordable housing for low income households, especially families. Funds are available for Serving Historically Underserved Communities, Rural and Urban Set-asides, Urban Communities, Service to Communities of Color, and Rural Communities. Available for affordable homeownership units (below 80% AMI). Note: The homeownership part may not be available by the next biennium.OHCS is proposing to eliminate it.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.oregon.gov/ohcs/Pages/multifamily-lift-housing-development-program.aspx
D21	Mental Health Trust Fund Awards	Administered by the Oregon Health Authority for capital construction costs.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
D22	Foundations Awards	Local, regional, and national foundations provide both capital funding and program funding for a wide variety of innovative housing models and programs.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Examples: Meyer Memorial Trust and Oregon Community Foundation (OCF)
D23	State of Oregon Debt*	State of Oregon to offer non-recourse low-interest debt that can be used to fund workforce or affordable housing. This could be provided through an existing relationship like Network for Oregon Affordable Housing (NOAH). This would be a valuable tool for providing housing in rural communities, where conventional debt funding may not be readily available.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
D24	State of Oregon Debt Support*	State of Oregon to provide some form of collateralization to support private debt placement for a workforce or affordable housing project. For example, the State could provide Letters of Credit and/or Guarantee on behalf of the developer to the private lender. This would be a valuable tool for providing housing in rural communities, where conventional debt funding may be hesitant to invest without substantial backing that the State could provide.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
	Luxury Tax for Equitable Housing	Sales tax on luxury items, 2nd homes, etc. dedicated to education and housing low income people. I know it's politically tough, but long overdue, and perhaps Oregon voters are ready. In fact, it is part of reparations deserved to displaced and excluded populations of color. Many other funding sources draw funds from the production of housing, meaning these funds dry up in bad economic times. The rich often keep spending in recessions, helping to ensure a supply of funds.			(nate@inkbuiltdesign.com)
	Public or Mission-Driven REITs and turn-key delivery	Most public subsidies and tax incentive programs are complex due to the need for regulation and corruption prevention, imposing many throttles on affordable development. If jurisdictions could participate in some sort of public REITs that buy turn-key projects for set costs, they could motivate mission-minded developers			(nate@inkbuiltdesign.com)

		<p>to drive down cost knowing that risk is minimal by having a buyer at the end. If they don't deliver the required specs, quality, and competitive construction cost, then they have to sell or rent on the open market or find other incentive dollars in current, standard fashion.</p> <p>Invest state pension funds in these REITs as they allow for lower returns than private investment, limiting the massive extraction of wealth by investors and banks in the construction of housing.</p>			
	Re-align funding resources	Because healthy housing makes a huge difference in health care, law enforcement, and other costs, identify paths to redirect cost savings in those other sectors toward housing construction funds and supporting services. Use advanced modeling projections and adjust as needed over time.			(nate@inkbuiltdesign.com)

Category E: Tax Exemption and Abatement

#	Strategy	Description	Affordability Target	Tenure Target	Source (if available)
E1	Nonprofit Low-Income Rental Housing Exemption	This tool can provide a simplified way for affordable housing owned and operated by a nonprofit (as well as land held by a nonprofit for future affordable housing development) or Community Land Trusts (at least in land value) to qualify for a property tax exemption. Work should be done to make it easier for projects/land to qualify; minimizing the number of taxing authorities needed to grant an approval.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	See Oregon Revised Statute Chapter 307.540 https://www.oregonlegislature.gov/bills_laws/ors/ors307.html
E2	Property Tax Exemption for Affordable Housing Tied to Level of Affordability	Create a Property Tax Exemption for affordable housing that is tied to level of affordability instead of the ownership structure. For example, grant a property tax exemption for affordable housing that serves households making less than 60% of AMI at initial lease up. Don't tie the property tax exemption to ownership (LLC, non-profit, housing authority) and only require income verification at the beginning of a residents tenancy. The property should still get the exemption even if the household increases income after their initial lease up so they can build assets in place.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
E3	Vertical Housing Development Zone Tax Abatement	Partial property tax exemption program on improvements for new mixed use development. To qualify, a project must have improved, leasable, non-residential development on the ground floor and residential development on the floors above. A partial abatement on land value is allowed for each equalized floor of affordable housing. This abatement could be made better by an adjustment to the floor equalization formula - right now, there is a 20% abatement per equalized floor, but if the project ends up being 3.8 equalized floors it only gets 3 floors worth of the abatement rather than an apportioned abatement.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Authorized by Oregon Revised Statute, 307.841. City of Hillsboro City of Beaverton City of Milwaukie Oregon City City of Gresham City of Tigard City of Wood Village
E4	Multiple Unit Property Tax Exemption (MUPTE)	This strategy can be used to incentivize production of multifamily housing with particular features or at particular price points by offering qualifying developments a partial property tax exemption over the course of several years.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	See Oregon Revised Statute, Chapter 307.600. https://www.oregonlegislature.gov/bills_laws/ors/ors307.html City of Eugene

E5	Multiple Unit Limited Tax Exemption (MULTE)	Under the Multiple-Unit Limited Tax Exemption (MULTE) Program, multiple-unit projects receive a ten-year property tax exemption on structural improvements to the property as long as program requirements are met.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Authorized by Oregon Revised Statute, Chapter 307.600 https://www.oregonlegislature.gov/bills_laws/ors/ors307.html https://www.portlandoregon.gov/phb/74691
E6	Homebuyer Opportunity Limited Tax Exemption Program (HOLTE)	Under the HOLTE Program, single-unit homes receive a ten-year property tax exemption on structural improvements to the home as long as the property and owner remain eligible per program requirements.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Authorized by Oregon Revised Statute, 307.651. https://www.portlandoregon.gov/phb/74639
E7	Homestead Tax	Consider allowing Homestead Tax on second homes to support development of affordable housing.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
E8	Property Tax Relief for Income-Qualified Homeowners	Property taxes are based on property values and so can go up regardless of the taxpayers' ability to pay. In the case of homeowners, rising property taxes can be an obstacle to housing affordability and stability. A tool used in a number of jurisdictions for mitigating these effects on those with limited incomes is by capping the amount of property tax that homeowners have to pay as a share of their income. Some jurisdictions also provide relief to lower-income renters by treating some portion of their rent as attributable to property taxes and then providing an income tax credit to offset the increase in taxes. In addition to basing the benefit on income, eligibility for caps can also be restricted to specific populations such as seniors, disabled persons, and/or veterans.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.localhousingsolutions.org/act/housing-policy-library/property-tax-relief-for-income-qualified-homeowners-overview/
E9	Investing into Federal Opportunity Zones (OZ)	Qualified Opportunity Zones (QOZ) were created by the 2017 Tax Cuts and Jobs Act. These zones are designed to spur economic development and job creation in distressed communities throughout the country and U.S. possessions by providing tax benefits to investors who invest eligible capital into these communities. Taxpayers may defer tax on eligible capital gains by making an appropriate investment in a Qualified Opportunity Fund and meeting other requirements.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions#qof
	(Deterrent for overpricing, not an incentive per se) Reduce or eliminate tax exemptions for empty units	Many overpriced market-rate units sit empty because it's more financially advantageous than reduced rents. Enact policy that requires reporting of vacancy rates and when vacancy on some properties differs greatly from local market demand and vacancy rates, that owner loses tax exemptions.			(nate@inkbuiltdesign.com)
	Transaction tax	Tax the flipping of properties			(nate@inkbuiltdesign.com)
	Reverse Tax Exemptions	Invert many conventional tax incentives. Allow housing to be built and operated at market rate, but allow a path for them to maintain / reduce rents over time rather than increase them. Once that property falls below 80%AMI (but maintains / exceeds HUD quality standards), tax exemptions kick in. Avoids the necessity of up front incentive dollars, SDC reductions, etc.			(nate@inkbuiltdesign.com)

	Georgist Land Tax	Reduce the windfall gains accrued from public investments capitalized into private value.			Daniel Mckenna-Foster, Housing Planner
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Category F: Land, Acquisition, Lease, and Partnerships

#	Strategy	Description	Affordability Target	Tenure Target	Source (if available)
F1	Land Banking	Public purchasing of vacant/under-utilized sites of land in order to save for future affordable housing development. House Bill 2003, section 15 supports land banking: SECTION 15. (1) As used in this section, "public property" means all real property of the state, counties, cities, incorporated towns or villages, school districts, irrigation districts, drainage districts, ports, water districts, service districts, metropolitan service districts, housing authorities, public universities listed in ORS 352.002 or all other public or municipal corporations in this state.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Metro TOD Program
F2	Joint Development Agreements	The Federal Transit Administration (FTA) enables local transit agencies to enter into Joint Development Agreements (JDAs) with private or non-profit developers of low income housing, market-rate housing, and/or commercial development. Joint Development is a process by which public transit or other local or state agencies agree to make land available at donated or reduced prices for private development, which may include affordable housing. Projects must demonstrate benefit to transit operations (ridership) and infrastructure and are subject to FTA approval.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
F3	Community Land Trusts	Land acquired by nonprofits or community-based organizations that maintain permanent ownership of land. Prospective homeowners are able to enter long-term (i.e., 99-year), renewable leases at an affordable rate. Upon selling, homeowners only earn a portion of the increased property value, while the trust keeps the remainder, thereby preserving affordability for future low- to moderate-income families	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
F4	Public/Private Partnerships (P3)	Partnerships between government and the private sector and/or nonprofits have the capacity to bring resources to the table that would otherwise not be available if each institution were able to help communities provide housing on its own. This can come in the form of coalitions, affordable housing task forces, and collaboratives.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
F5	Preserving Low-Cost Rental Housing to Mitigate Displacement	Preventing displacement and preserving "naturally occurring" affordable housing through acquisition, low-interest loans/revolving loan fund for preservation, and/or code enforcement. Example: The Oregon Legislature committed \$15 million in lottery bonds to Oregon Housing and Community Services (OHCS) in 2019 to create a naturally occurring affordable housing loan fund. Modeled after the Greater Minnesota Housing Fund.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	https://gmhf.com/about/programs/noah-impact-fund/
F6	Preserving Safe, Affordable Manufactured Homes	Manufactured home parks often provide a form of affordable housing stock, but are particularly vulnerable to redevelopment pressures since lots are temporarily leased out. In order to preserve safe, affordable options into the future, manufactured home parks may be protected through assistance that allows community purchase of the underlying land, manufactured homes and provide funds used to maintain upkeep of these dwelling units. This strategy is often implemented through use of Land Trusts, Resident-Owned Cooperatives, Public	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Portland https://www.oregon.gov/ohcs/Pages/manufactured-dwelling-park-services-oregon.aspx

		Ownership of Land, or Condominium Conversion of the real estate assets to preserve the community(ies). Oregon Housing and Community Services (OHCS) has regularly received lottery bonds or general funds from the Oregon Legislature to preserve manufactured home parks through either Resident Owned Cooperatives or Non-profit ownership.			
F7	Providing Information and Education to Small Developers	Providing information to small, local developers that will help them understand land use permitting processes and give them a sense of clarity and certainty about requirements so they can better provide smaller scale housing at an affordable level.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
F8	Conversion of Underperforming or Distressed Commercial Assets	Acquisition of underperforming or distressed commercial assets (commercial, retail, industrial, or hotel) or partnerships with owners of the assets for conversion into needed housing.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
F9	Enhanced Use Lease of Federal Land	The US Department of Veterans Affairs (VA) may lease land for up to 85 years to developers of projects which provide the VA with compensation. Such enhanced use leases have been used to provide land for permanent affordable housing for people experiencing homelessness including veterans in Oregon, Minnesota and Washington States.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Housing Authority of Douglas County
F10	Prioritize Housing on City/County Owned Land	Surplus property suitable for housing is offered up for affordable development.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Eugene
F11	Combine Community Land Trust with Limited Equity Cooperative Model	Combine a Community Land Trust (CLT) with a Limited Equity Cooperative for a lower barrier entry to homeownership of a share of a permanent small/tiny home community.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	SquareOne Villages
F12	Surplus Land for Affordable Housing	Sell land at the State or City's cost (below market) to developers of affordable housing. Long-term lease at very minimal cost to developers for land the City is not yet ready to surplus. County surplus of foreclosed land to affordable housing developers and/or housing authority.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Bend
F13	McKinney-Vento Federal Surplus	Cities may partner with the Federal Government to surplus Federal land for homeless housing or services under McKinney Vento.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Bend
F14	Right of First Refusal for Land Purchase	Affordable housing providers could be offered a Right of First Refusal for city, county, or state owned land when the land would be used for affordable housing. Examples include a manufactured home program where residents can buy out the manufactured home park when the owner is ready to sell.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	CASA of Oregon https://casaoforegon.org/for-individual/manufactured-housing-cooperative-development/

F15	Ordinances that Address Zombie Housing	More assertive tax foreclosures to enable zombie housing to be rehabbed into occupied housing.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
F16	Regulatory Agreement	Regulatory Agreement, between the jurisdiction and developer, in place with the land sale that keeps the units affordable for 20 years in exchange for SDC waivers. This is straightforward without going through a difficult or costly process.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	City of Beaverton
F17	Designated Affordable Housing Sites	A jurisdiction would establish designated sites with a completely different set of regulations than apply to the balance of the public and private building sites. The sites would be overseen by an Affordable Housing Commission, that is empowered to prioritize, fast track, and approve affordable housing projects (with designated and required affordability objectives) and bypass the majority of the city's fees and regulations. The Commission would have its own set of requirements (structural approval, zoning allowance, etc.), but they would be streamlined, and tailored to facilitate a quicker and much less expensive process.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	
F18	Utilize Surplus Land Owned by Faith-Based Organizations for Affordable Housing	Over the past few decades, faith institutions across the country have been declining. This has prompted conversations within different faith communities about how to refocus their mission of social change. The housing affordability crisis in many cities around the country has brought these institutions into the work of creating affordable housing in their communities. This strategy would: 1) Identify faith and community-based organizations that are interested in offering their available land for development of affordable housing, 2) Provide design and finance consultation for three organizations to prepare them for future affordable housing development projects, and 3) Determine barriers to development and how those can be addressed and/or streamlined.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	Expanding Opportunities for Affordable Housing, Metro and City of Portland

Category Z: Custom Options

#	Strategy	Description	Affordability Target	Tenure Target	Source (if available)
Z1	TBD	Any other Housing Production Strategy not listed above in Categories A through F that the jurisdiction wishes to implement should be filled in here and numbered accordingly.	Publicly-Subsidized (< 30% AMI) Affordable (30-80% AMI) Workforce (80-120% AMI) Market Rate (> 120% AMI)	For Rent For Sale	

NOT HOUSING PRODUCTION STRATEGIES (Removed from the list)

	Protection from Condo Conversions	<p>In order to reduce the stress and cost of displacement caused by condo conversions or sales of rental buildings, some jurisdictions provide tenants with protections in the event that their landlord seeks to convert or sell. Protections can include: requiring approval of a majority of residents for a conversion; providing for a long notice period before a conversion or sale; giving tenants a right to purchase units before they can be offered to outside buyers; relocation assistance paid by the landlord for tenants forced to move because of a conversion; and/or giving tenants a right to remain as a renter or renew a tenancy following a sale. Oregon currently provides basic protections for tenants against condo conversions.</p> <p>Discussion Note: This strategy is not about housing production but housing type. Condo are a homeownership option that is less expensive than single detached. A conversion will just change the type of housing, not add or reduce housing. This should not be included in the housing production strategies.</p>	<p>https://www.oregonlaws.org/ors/100.310</p>
	Create a Bounty on Denial of Needed Housing	<p>Consistent with the changes made to ORS 197.830(15)(c), denial of Needed Housing would be the source of an attorney fee claim at LUBA. One could be even bolder and suggest that "denial" encompasses imposition of conditions that are not "clear and objective." The "raise it or waive it" requirement would remain applicable where there was an opportunity to do so at the local level.</p> <p>DiscussionNote: Is this something that jurisdictions can enact or does it need to be at the state level? If jurisdictions can not enact this, then it probably shouldn't be in the housing production strategies.</p>	<p><i>(Ed Sullivan)</i></p>
	Survey Applicants on Development Program Decision-Making	<p>[At the HPSTAC Commissioner Hallova mentioned an idea about asking development applicants how they decided on their development program and which public incentives were part of the consideration - this is a worthy idea that could lead to better information about how to tailor strategies toward production. An alternative to requiring cities to collect this info, is to consider this approach as part of a production strategy. To be a strategy it needs additional action like logging and making publicly available the aggregated survey information on the city's housing/development /planning webpage or something. The information could be collected on a form separate from the development application, so it is clear that the additional information is not part of the permit decision. This obviously needs more work, but I think there is a viable strategy here]</p>	<p><i>(Deb Meihoff)</i></p>
	Prevailing Wage Realignment	<p>It makes no sense that higher fair-wage requirements apply to affordable housing but not to market rate. Find better ways to regulate fair wages across the entire industry and remove these onerous requirements from affordable housing. Otherwise, factory-built housing alternatives will undermine these efforts anyway, negatively affecting minority contractors and small businesses. The goals of labor equity need a holistic re-design as part of other strategies above.</p>	<p><i>(nate@inkbuiltdesign.com)</i></p>

	Eliminate value giveaways for developers	Large public investments such as light rail systems and de facto giveaways such as UGB expansion allow private land owners and developers to reap significant and instant rewards while causing more displacement and/or segregation by income status. Make these changes contingent on the provision of affordable housing in specific, higher than usual ratios.	<i>(nate@inkbuiltdesign.com)</i>
	Prioritize Ownership	Home ownership is hugely advantageous for individuals and families than renting. Revamp condominium law to reduce risk in developing condos. Offer additional tax and density incentives for the provisions of ownership units in lieu of rental units.	<i>(nate@inkbuiltdesign.com)</i>
	Correct for disproportionate land values (that exist because of historically racist policies and predatory gentrification)	Increases in property values are hugely disproportionate by neighborhood, and the profitability of house flipping, vacation rentals, etc. drive costs up rather than supporting affordability. <ul style="list-style-type: none"> • Increase public investments in neglected neighborhoods, prioritizing them first. • Add a transaction tax to all homes sold when the price exceeds local AMI • Enforce taxes on vacation rentals and direct them to housing • Programs that allow low income owners in high cost neighborhoods to apply for reduced property taxes • More ideas?! 	<i>(nate@inkbuiltdesign.com)</i>
	Reform Transportation (Ha!)	Invest in sustainable last-mile transportation systems to eliminate the need for individual car ownership. Tax private vehicles or provided vehicle parking yearly based on size (only for market rate housing until equitable transit is widely available)	<i>(nate@inkbuiltdesign.com)</i>
	Pie in the Sky	Reduce the difficulty of regulation based on income by reforming the national tax system. Make the process more direct and automatic, similar to Japan. This reduces/eliminates the need to deal with income reporting specific to affordable housing as a buyer/renter's information is directly available as a score from the IRS.	<i>(nate@inkbuiltdesign.com)</i>
	Regulate Privilege	Limit luxury development using thresholds tied to local population income statistics. (especially needed in coastal communities and tourist towns) Beyond these limits, luxury development must include affordable accessory dwellings or nearby affordable housing.	<i>(nate@inkbuiltdesign.com)</i>

Housing Production Strategy Technical Advisory Committee Meeting #6
 July 20, 2020; 9:00 am – 12:00 pm

Department of Land Conservation and Development (DLCD)
 Zoom Virtual Meeting



Public Comment Summary June 11 – July 15, 2020

Date	Commenter	Commenter Type	Comments Summary	Comment Type
6/12/2020	Jane Morrison	Public	A letter from the Jennings Lodge Community Planning Organization, which calls for better clarification surrounding the term "sufficient urban services" as defined in ORS 195.065. The letter raises concerns regarding the sufficiency of infrastructure in Jennings Lodge as well as who pays for improvements.	Letter
6/15/2020	Brian Martin	RAC	A letter from Brian Martin providing three conceptual approaches to clarifying a key provision of House Bill 2001: "All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings". The letter calls for providing local jurisdictions flexibility in implementing the law within local context. The three options include: - An option requiring local jurisdictions to establish boundaries that define areas - An option requiring local jurisdictions to establish boundaries that define areas with parameters to address "significant development of middle housing", locational considerations, and equity considerations - An option similar to the second option, but providing minimum percentage thresholds on which middle housing is permitted.	Letter
6/15/2020	Ellen Miller	RAC	A letter submitted on behalf of the Oregon Home Builders Association outlining proposed revisions to the Model Code and Minimum Compliance Standards for Large and Metro Cities. The letter argues that some revisions to siting and design standards are necessary to	Letter

			<p>ensure that townhouses are both feasible to build and easier to provide on fee-simple lots in recognition that there should be no discernable difference between a plex and townhouse, other than the underlying lot configuration.</p> <p>The letter offers the following specific recommendations:</p> <ul style="list-style-type: none"> - Default to existing lot frontage standards for local jurisdictions - Remove applicability of FAR to townhouses - Remove open space/landscaping standards - Remove requirements for common areas - Remove required design elements that add cost and complexity to townhouse projects. - Limit local governments from prohibiting less than ten attached units in a townhouse project - Limit local governments from limiting townhouse lot dimensions, density, minimum parking, height, and setbacks - Limit design standards (entry orientation, windows, and driveway access/parking) in both the Model Code and Minimum Compliance standards. 	
6/17/2020	Ed Sullivan	RAC	<p>A letter from Ed Sullivan outlining comments on strategies used in a Housing Production Strategy, developed in conversation with other housing advocates. The letter provides commentary and considerations about a variety of potential strategies in development, raising issues related to the potential effectiveness, legal/constitutional authority, implementability, costs, and cost payers associated with various strategies, especially for provisions related to SDCs. The letter advocates incorporation of a Fair Housing Council of Oregon document outlining code revisions that would better support fair housing in local jurisdictions.</p>	Letter
6/18/2020	Andree Tremoulet	TAC	<p>An email advocating for OHCS and DLCD to utilize data sources such as Redfin, Zillow, and COSTAR to develop a better centralized data source to understand rental and owner housing information. This information could be presented to local jurisdictions on a regular basis and used to inform Housing Production Strategy reporting.</p>	Email

6/21/2020	Andree Tremoulet	TAC	<p>A memorandum outlining recommended changes to the proposed Housing Production Strategy Report requirements and guidance, including:</p> <ul style="list-style-type: none"> • Requiring cities to identify the housing classifications by tenure, affordability, and housing type that they intend to focus on in their strategies. • Encouraging cities with Consolidated Plans or an Analysis of Impediments/Fair Housing Plan to incorporate resources and actions from these plans in their responses, thus encouraging dialogue and coordination between land use/long range planners and those managing federal housing resources within cities. • Recommending that staff continue to refine the five questions and get additional input from communities of color and suggesting that gentrification be included for cities where it is a factor. • Recommending that staff further consider the benefits of incorporating elements of a “fair share” approach to calculating the number of houseless households to avoid encouraging cities that have few houseless households due to a meager service network and strict enforcement of nuisance ordinances to continue those practices. 	Letter
6/24/2020	Michael Andersen	Public	<p>A letter from the Sightline institute advocating for minimum compliance standards that reduce the burden of off-street parking requirements on plex development feasibility.</p> <p>Recommendation for off-street parking requirements: The minimum compliance standard should legalize triplexes that create exactly two off-street parking spaces, and fourplexes that create exactly three. In addition, the state should require cities to let any adequate curbside space adjacent to the property count toward any parking that may be required beyond the first two off-street spaces.</p> <p>Rationale for the recommendation: Zero-car households are common everywhere in Oregon. Most Oregonians would probably prefer buildings legalized by HB 2001 to be attractive.</p>	Letter

			The state's new economic analysis just concluded that fourplexes will be particularly important to housing production under HB 2001. Oregon should ensure that its codes align with state policies, especially GHG emission reductions.	
6/25/2020	Daniel Pauly	Staff	A letter from planning staff at the City of Wilsonville expressing concern regarding the RAC approach to defining "in areas zoned for residential use that allow for the development of detached single-family dwellings". The letter raises concerns that the "whittle away" approach may make master planned communities, which would enable the provision of higher middle housing, illegal under the proposed rule. The letter recommends transitioning either to a performance metric approach or incorporating a "positive performance" approach that would allow for housing developments, master planning, and PUDs that better incorporate middle housing in comparison to alternatives.	Letter
6/25/2020	Ellen Miller	RAC	Email provides suggested approach for defining FAR: Floor area is defined by actual livable floor space. Calculation should not include garage. Count the stairs once, measure from the inside of the walls of the living unit and deduct for interior walls. For example a 10' - 2 x 4 wall is (10' x 4") or 3.33'. You would deduct this from the FAR. If you have a wall sitting on the floor it is not an actual floor or usable space.	Email
7/1/2020	Ed Sullivan	RAC	An email informing DLCD staff of a recent decision by the Oregon Court of Appeals regarding Kamps-Hughes v. City of Eugene (2020), which affirmed the decision by LUBA. This decision has implications for the meaning behind the phrase "siting" in "siting and design".	Email
7/1/2020	Kelly O'Neill	Staff	An email urging DLCD staff to not allow flexibility to local jurisdictions that would lead to removal of middle housing within certain areas within a city and allow additional exclusionary zoning within a city. Allowing this runs the risk of perpetuating patterns of housing segregation.	Email
7/3/2020	Michael Andersen	Public	A letter from Michael Andersen on behalf of sightline and various members of the RAC/TACs	Letter

			advocating for a tiered approach to parking requirements for the minimum compliance section. The underlying rationale is that excessive parking requirements will render plexes infeasible on smaller lots.	
7/3/2020	Eli Spevak	Public	A letter advocating for the allowance of cottage cluster development in the Model Code on fee-simple taxlots to better facilitate their development. The letter includes a variety of specific recommendations to increase cottage cluster feasibility and provide greater ownership options.	Letter
7/3/2020	Mary Kyle McCurdy	RAC	A letter advocating for the use of the "whittle away" approach in defining "in areas" as specified in House Bill 2001. The letter includes several arguments as to why the "balloon" approach has in relationship to equity and consistency with the intent of HB 2001. The letter also recommends that the RAC and TAC begin determining which protective measures would cause areas to require regulations for housing types beyond duplexes.	Letter
7/10/2020	Ed Sullivan	RAC	An email outlining four legal issues for RAC consideration, including: The issue of a Housing Production Strategy that is based on an older Housing Needs Analysis with poor data/analysis. If the HNA schedule is the mechanism to update these analyses, that could allow for updated HNAs as late as 2028 for some jurisdictions. The issue of Model Code application in the event of a local jurisdiction failing to meet HB 2001 requirements with one or a few elements of their adopted code. Additionally, there is risk in the current enforcement framework of acknowledging codes that are not sufficiently in compliance with HB 2001. The IBTER Remedy should a local jurisdiction decide to not comply with HB 2001 or fails to remedy deficient infrastructure through an IBTER. The importance of having sufficient data on race and ethnicity in population estimates and/or forecasts to develop policy solutions to inequity.	Email

7/10/2020	Ariel Nelson	TAC	<p>A letter urging the Department to revisit the current approach to minimum compliance for triplexes, quadplexes, townhomes, and cottage clusters, as well as the approach to "in areas". Argues that the current approach to rules prevent the ability for local jurisdictions to regulate middle housing. LOC recommends an alternative approach with the following elements:</p> <p>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. Each jurisdiction would be able to define geographic areas</p> <p>Local jurisdictions' standards must allow middle housing types within each area designated within a jurisdiction with established state expectations.</p> <p>The administrative rules also could specify that middle housing must be allowed in high-wealth/low-poverty sub-areas</p>	Letter
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jenningslodgpecpo@gmail.com

June 11, 2020

RE: Oregon House Bill 2001 – Middle Housing

Dear Ethan Stuckmayer, Oregon Department of Land Conservation and Development:

Residents in unincorporated Jennings Lodge, Clackamas County, are concerned about several urban services issues to be impacted by House Bill 2001 and how they might negatively effect Jennings Lodge. The Jennings Lodge Community Planning Organization voted at its regular May 26, 2020 meeting to send letters to those agencies who may have a role in determining how those issues are approached in implementing the Bill, which includes Department of Land Conservation and Development, Clackamas County, and Oak Lodge Water Services District.

HB 2001 says middle housing requirements don't apply to lands that are not incorporated and also lack sufficient urban services. (The ORS 195.065 cited in the Bill says these services are Sewers; Water; Fire Protection; Parks; Open Space; Recreation; and Streets, Roads and Mass Transit.)

Definitions of sufficient vs. deficient urban services have yet to be clarified.

We understand from Department of Land Conservation and Development staff and ORS **195.065** that each county within an urban growth boundary shall negotiate with service providers responsible for urban services within the county to negotiate urban service agreements. We have queried Clackamas County, and Oak Lodge Water Services which is responsible for our sewer and surface water quality – The surface water systems in the Oak Lodge District is owned by Clackamas County. We are concerned the question of sufficient urban services is being addressed by those agencies, as there are deficiencies now, which the community has repeatedly called to their attention over many years. We also understand that Oak Lodge Water Services does not have data to determine what the demand would be for their services if/when HB 2001 is implemented, and no way to project what remedies might be needed.

The Jennings Lodge Community Planning Organization requests copies of all Clackamas County urban services agreements affecting Jennings Lodge residents in unincorporated Clackamas County, including Oak Lodge Water Services District, North Clackamas Parks & Recreation District, and agreements relating to streets, roads, the mass transit and metropolitan service district.

Once sufficient vs. deficient urban services are fully defined for current density, and for HB 2001 intended growth levels, who will pay for fixing deficiencies in storm drainage, transportation services, parks, recreation, open space, and mass transit?

HB 2001 lets local governments ask for an extension on implementing the middle housing requirements, for areas where water, sewer, storm drainage or transportation services are significantly deficient; and for which the local government has a plan to remedy those deficiencies. As just one example of deficiencies in Jennings Lodge, streets and yards flood regularly after a big rainstorm, because we already have deficient storm water

drainage (there *is* no sufficient public storm drainage management system), which could only increase with added development.

Both the State and Clackamas County have deemed Jennings Lodge to be an area with high concentrations of low-income populations. While it would be very valuable to have our significantly deficient urban services remedied , people in Jennings Lodge are concerned that steps taken to remedy those deficiencies for future development would put untenable financial consequences burdens on Jennings Lodge property owners, rate payers, and residents.

We wish to make known our concerns that any steps taken to fix deficiencies will require significant added financial burdens on current property owners and residents due to anticipated future development.

For our community,

Jane Morrison, Chair,
Jennings Lodge CPO

CC: Kevin Williams, Oak Lodge Water Services District
Chair Jim Bernard; Gary Schmidt, Clackamas County Administrator; NCPRD



June 15, 2020

Ethan Stuckmayer
Oregon Department of Land Conservation and Development
635 Capitol Street NE #150
Salem, OR 97301

Dear Ethan Stuckmayer:

The Department of Land Conservation and Development (DLCD) is in the rulemaking process for House Bill 2001, which requires cities to allow middle housing (duplexes, triplexes, quadplexes, townhomes and cottage clusters) in areas zoned for residential use. In the latest Rulemaking Advisory Committee packet, DLCD staff proposed two approaches to define "areas" in which local jurisdictions must allow triplexes, quadplexes, townhomes and cottage clusters.

Local governments have expressed the need for more flexibility to implement the law considering local context while ensuring that cities and counties implement HB2001 and satisfy its intent to provide more housing choice for community members. This should explicitly promote fair housing outcomes that increase racial equity and reduce segregation based on race, ethnicity and income.

This letter includes ways to provide that increased flexibility for local jurisdictions while allowing DLCD to evaluate whether cities and counties are complying with the law and ensure compliance.

The following approaches are conceptual. They would require additional work to improve the language and possibly in some cases find specific measures that would help achieve the desired outcome and work in multiple communities. The approaches do not consider duplexes because that housing type must be required on every lot rather than in "areas."

Three options are described below, with the intention of showing a range of approaches and informing the work of DLCD staff and its consultants as well as discussions at the Rulemaking Advisory Committee and Technical Advisory Committee related to this topic.

Minimum compliance options (for everything but duplexes)

Option A: One guideline

Conceptual OAR language (draft)

1. Local jurisdictions shall establish boundaries that define areas and, within those areas, shall allow all middle housing types consistent with HB2001 in a manner that significantly and broadly allows middle housing, promotes racial equity through housing opportunity and provides the opportunity for added housing types to reduce segregation by race, ethnicity and income. The areas defined shall cumulatively include all land zoned for residential use.

Commentary to describe intent or clarify language

This is an attempt at a shorter statement that provides a lot of flexibility and discretion. This leaves a lot of discretion with DLCD and may produce more disagreements about whether a jurisdiction has approved rules that are consistent with the minimum compliance.

Option B: Specific but non-numeric guidelines

Conceptual OAR language (draft)	Commentary to describe intent or clarify language
1. Local jurisdictions shall establish boundaries that define areas. The areas defined shall cumulatively include all land zoned for residential use.	Boundaries can be zones, land use districts, Comprehensive Plan designations, development pattern areas or any other geographical solution jurisdictions develop to comply with HB2001 consistent with local context. The boundaries that establish these areas can be established by the local jurisdiction but must cover every lot that meets the definition for "zoned for residential use," which is a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan designation.
2. Local jurisdictions' standards shall allow all 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.	This furthers the intent of HB2001 by ensuring that triplexes, quadplexes, townhomes and cottage clusters are allowed within each area. Local jurisdictions may choose to allow more of one type than the other, but all must be present within the area.
3. Local jurisdictions shall develop standards related to middle housing within each area that shall, as applied, allow: a) Significant development of middle housing types within each defined area. This means the regulations as applied need to allow significant development with the existing lot pattern. b) Significant development of middle housing types within low-poverty sub-areas within each area (or perhaps another measure, such as any subarea with housing values greater than median.)	This provides expectations that DLCD can use to evaluate whether a jurisdiction is successfully and equitably allowing middle housing types. a) When a jurisdiction establishes rules, they must meet the "significant" test, meaning that allowing housing types on one lot is not enough because that is not a significant amount of allowance. This approach does not set a percentage. The language also clarified that rules as applied need to allow, meaning a jurisdiction cannot say they allow the housing types everywhere but have development or design standards that effectively prohibit them. b) This language seeks to ensure that high-income areas or subareas within the "areas" cities define are not entirely excluded from middle housing types. Wealthy neighborhoods cannot be entirely exempt. Caveats: This language is a placeholder and some work could be done to identify the best measure to use to ensure high-wealth areas are not excluded from the reach of HB2001. In

Conceptual OAR language (draft)

Commentary to describe intent or clarify language

addition, this section should probably say that significant allowances are not required if exemptions are allowed elsewhere in the minimum compliance, such as exemptions for Goal-protected areas.

4. All jurisdictions shall demonstrate through findings how regulations will comply with the provisions above and promote the opportunity for additional housing types to promote increased racial equity and reduced segregation by race, ethnicity and income.

Call for findings to consider equity so DLCD can evaluate how the jurisdiction analyzed and addressed equity when creating its regulations. This can inform DLCD's judgment about whether a jurisdiction met the expectations above.

Option C: Specific and numeric guidelines

Conceptual OAR language (draft)	Commentary to describe intent or clarify language
<p>1. Local jurisdictions shall establish boundaries that define areas. The areas defined shall cumulatively include all land zoned for residential use.</p>	<p>Boundaries can be zones, land use districts, Comprehensive Plan designations, development pattern areas or any other geographical solution jurisdictions develop to comply with HB2001 consistent with local context. The boundaries that establish these areas can be established by the local jurisdiction but must cover every lot that meets the definition for "zoned for residential use," which is a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan designation.</p>
<p>2. Local jurisdictions' standards shall allow all 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.</p>	<p>This furthers the intent of HB2001 by ensuring that triplexes, quadplexes, townhomes and cottage clusters are allowed within each area. Local jurisdictions may choose to allow more of one type than the other, but all must be present within the area.</p>
<p>3. Local jurisdictions shall develop standards related to middle housing within each area that shall, as applied, allow:</p> <p>a) Middle housing in each area consistent with:</p> <ol style="list-style-type: none"> i. A minimum percentage of lots within each area, specifically: <ol style="list-style-type: none"> 1. Triplexes and quadplexes: 25 percent; and 2. Townhomes: 10 percent; and 3. Cottage clusters: 100 percent of lots that are greater than 10,000 square feet; or ii. Percentages lower than those specified in (i) above approved by DLCDD because of natural, physical or hazardous conditions. The percentage reduction shall be the minimum amount needed to address the constraint. The jurisdiction shall make findings for each housing type. 	<p>This provides expectations that DLCDD can use to evaluate whether a jurisdiction is successfully and equitably allowing middle housing types. It allows two paths. A clear and objective path with numerical percentages to meet. These percentage are placeholders. Additional analysis would be required to identify reasonable percentages that increase the potential for middle housing while allowing cities flexibility to implement the code in a way that works for the context. For reference, in Beaverton a couple of the options presented by DLCDD would not allow triplexes and duplexes on most lots in Beaverton's R7 zone, which has a maximum density of 6.2 units per acre and requires 7,000 square feet of land per home.</p> <ul style="list-style-type: none"> • If minimum lot size were 125 percent of the 7,000-square-foot minimum lot size for triplexes: 37 percent of lots R7 lots. • If minimum density were 150 percent of the 7,000-square-foot minimum lot size for triplexes: 19 percent of all R7 lots.

Conceptual OAR language (draft)

Commentary to describe intent or clarify language

b) Significant development of middle housing types within low-poverty subareas within each area (or perhaps another measure, such as any subarea with housing values greater than median), in a manner that increases racial equity and reduces segregation by race, ethnicity and income.	b) This language remains because it is important that middle housing types be allowed broadly rather than being excluded from some areas, such as in response to neighborhood opposition.
4. All jurisdictions shall demonstrate through findings how regulations will comply with the provisions above and promote the opportunity for additional housing types to promote increased racial equity and reduced segregation by race, ethnicity and income.	Call for findings to consider equity so DLCD can evaluate how the jurisdiction analyzed and addressed racial equity when creating its regulations. This can inform DLCD's judgment about whether a jurisdiction met the expectations above.

I appreciate DLCD staff's work and staff's willingness to listen and incorporate comments from stakeholders. I would like to request that you share this letter with DLCD staff, Rulemaking Advisory Committee members and Technical Advisory Committee members, and I hope these ideas inform future DLCD staff work and RAC and TAC discussions.

Sincerely,

Brian Martin, Long Range Planning Manager
Community Development Department
City of Beaverton



June 15, 2020

Ethan Stuckmayer
Senior Planner of Housing Programs
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Ste. 150
Salem, OR 97301

Re: HB 2001 Large Cities Townhome Model Code and Minimum Standards

Dear Ethan,

Thank you for the opportunity to meet with your team and to submit the following comments on the proposed townhome model code and minimum standards for large and Metro cities, dated May 26, 2020. The Oregon Home Builders Association (OHBA) worked with Speaker Kotek to include townhomes and cottage clusters in HB 2001 to expand middle housing homeownership opportunities in neighborhoods that have been exclusively detached single family residential. To help builders increase the supply of this housing type in a timely and affordable manner, we ask your team to find ways to reduce townhome development complexities and regulations in this draft rule.

Chapter 4, Section A – Permitted Uses and Approval Process

The intent for including townhomes and cottage clusters under the umbrella of middle housing was to acknowledge the need to streamline processes or develop a new process to allow for simple land divisions. The only difference between building an attached duplex, triplex or quadplex and a townhouse under HB 2001 is the ownership structure. There is no additional demand on infrastructure. A streamlined land division process should be considered for certain infill lots or parcels that are divided into four lots or less.

Chapter 4, Section B – Development Standards and Section C – Design Standards

In general, the consumer should determine design standards. An exception would be the application of design standards in locally adopted historic neighborhoods. Our recommendation for townhome regulations, regardless of the neighborhood, are summarized in the attached table. To maximize housing affordability, we have removed several sections from the proposed chapter.

The proposed townhouse rules should prohibit local jurisdiction regulation of the following:

- B.5 Minimum lot frontage - This issue is covered through local regulations around creating legal, developable lots. Importantly, for many Planned Unit Development projects, many units have no frontage.
- B.9 Floor Area Ratios - Due to small lot sizes, townhome size and massing is best managed through setbacks and height regulations, which are included in the model code. Additionally, the use of FAR will increase application complexity, which will drive up the cost of reviewing and processing applications.
- B.11 Open space/landscaping standards - Open space requirements will effectively prohibit the development of townhomes. As attached single family units, they should not be required to include open space, which is more applicable to multifamily housing. Due to small lot sizes, open space is best managed through setbacks regulations, which are included in the development standards.
- B.12 Areas in common – A shared ownership structure of the common area, for the purpose of maintenance, adds cost and complexity to a townhouse project.
- C.2 Unit definition – Required balconies, porches, recessed entries, frontage offsets, etc. add unreasonable cost to building townhomes.

We have summarized our recommendations for the remaining model code and minimum standards sections of Chapter 4, Townhouses, in the enclosed table. For reference, we have used the same section numbers as the May 26, 2020 draft.

Thank you again for your time and consideration. We look forward to having an in-depth conversation about townhomes and cottage clusters at the next Technical Advisory Committee meeting.

Sincerely,



Ellen L. Miller
Government Affairs Director
Oregon Home Builders Association

Cc: Kevin Young, Sean Edging, Robert Mansillo, DLCD

Attachment



Exhibit 1 – OHBA Recommendations for Townhouse development and design standards

Standard	Model Code	Minimum Compliance
B. Development Standards		
B.2. <u>Number of Units.</u>	Minimum: A townhouse project must contain at least two (2) units. Maximum: There is no maximum number of consecutively attached units per townhouse structure.	Local governments must require at least two attached townhouse units and must allow up to four attached townhouse units. Local governments may not prohibit less than ten attached units in a townhome project.
B.3. <u>Minimum Lot Size.</u>	No requirement	A minimum lot size is not required. However, if a jurisdiction applies a minimum lot size it must be no more than the minimum lot size for a detached single family dwelling in the same zone.
B.4. <u>Minimum Lot Width.</u>	No requirement	A minimum lot width is not required. However, if a jurisdiction applies a minimum lot size it must be no more than the minimum lot width for a detached single family dwelling in the same zone or fifteen (15) feet, whichever is smaller.

Standard	Model Code	Minimum Compliance
<p><u>B.6.</u> <u>Maximum</u> <u>Density.</u></p>	<p>No requirement. Townhomes consist of a single dwelling unit per lot. For the purpose of this definition, an ADU shall not count as a dwelling unit.</p>	<p>Maximum density is not required. Local jurisdictions may regulate maximum density by minimum lot size.</p>
<p><u>B.7.</u> <u>Setbacks.</u></p>	<p>Townhouses shall be subject to the following minimum and maximum setbacks:</p> <ul style="list-style-type: none"> • Front: The same minimum setback as applicable to detached single family dwellings in the same zone. Minimum front setbacks greater than 20 feet are invalid, except those applicable to garages or carports. • Rear: The same minimum setback as applicable to detached single family dwellings in the same zone, except minimum rear setbacks greater than fifteen (15) feet are invalid. • Street Side: The same minimum setback as applicable to detached single family dwellings in the same zone, except minimum street side yard setbacks greater than twenty (20) feet are invalid. • Interior Side: <ul style="list-style-type: none"> ○ The setback for a common wall lot line where units are attached is zero (0) feet. ○ The setback at the end of a townhouse structure is five (5) feet. 	<p>Same as Model Code.</p>

Exhibit 1 (continued) – OHBA Recommendations for Townhouse development and design standards

Standard	Model Code	Minimum Compliance
<u>B.8. Height.</u>	A townhouse may include a third story in areas not otherwise prohibited by Goal 15: Willamette River Greenway or Goal 5: historic resource protections.	Local governments’ height standards must allow construction of at least two stories.
<u>B.10. Off-street Parking.</u>	Off-street parking is neither required nor prohibited.	A local government may not require more than one off-street parking space per townhouse unit. Local jurisdiction may not prohibit off-street parking.
<u>C. Design Standards</u>		
<u>C. 1. Entry Orientation.</u>	No requirement.	Local jurisdiction may require the main entrance of each townhouse to face a street property line, an alley, or common open space. If a townhouse has more than one street property line, the entrance may face either street.
<u>C.3. Windows.</u>	A minimum of 15 percent of the area of all street-facing facades on each individual unit must include windows or entrance doors. Window area is the aggregate area of the glass within each window, including any interior grids, mullions, or transoms (<i>Consider adding window area and door area to the definitions section so the same calculation applies to other middle housing types</i>). Door area is the area of the portion of a door other than a garage door that moves and does not include the frame. Window area in the door of an attached garage may count toward meeting this standard.	Local jurisdictions may not require more than 20 percent of all the street-facing facades on each individual unit including windows or entrance doors. Window area is the aggregate area of the glass within each window, including any interior grids, mullions, or transoms. Door area is the area of the portion of a door other than a garage door that moves and does not include the frame. Window area in the door of an attached garage may count toward meeting this standard.

Exhibit 1 (continued) – OHBA Recommendations for Townhouse development and design standards

Standard	Model Code	Minimum Compliance
<u>C.4. Driveway Access and Parking.</u>	No requirement.	Local jurisdictions may not require rear access alleys.

MEMORANDUM

From: Edward J. Sullivan
To: Ethan Stuckmayer, DLCD
Date: June 16, 2020
Subject: HPS Strategies

In the HPSTAC Meeting #5 materials, there was a worksheet that, *inter alia*, asked for comments on various strategies. I met with a number of other housing advocates and came up with some comments that I was asked to bring forward. I do not represent that all of these comments reflect everyone's views, but I am copying those persons and others so that they may indicate other positions to you.

Where I do not comment, it is either because I agree with the strategy or am not competent to evaluate the effectiveness of the strategy. Using the list you provided at https://docs.google.com/document/d/1wg091os-MPyOML3TYtKu01895xsi47ZMVOhp_18Am8E/ I provide the following comments:

Zoning and Code Changes

A1 Ensure Land Zoned for Higher Density is not Developed at Lower Densities – Generally, we agree and note that Metro and some other local governments use a minimum density policy. To prevent “underbuilding,” this should be a presumptive policy, so that any deviation to 10% less than maximum density without an adequate explanation based on other legitimate considerations, such as topography or other physical limitation, protections imposed by other statewide planning goals, or the like is presumptively invalid and may be tested on appeal. Additionally, FHCO created a checklist of code revisions to be considered. I attach that list to this memo.

A2 Zoning Changes to Facilitate the Use of Lower-Cost Housing Types -- If state law or the local plan allows these types, this should be presumptively approvable.

A4 Housing Rehabilitation Codes – There was a case in Minnesota that almost got to the US Supreme Court in which landlords of older housing stock argued that rigorous enforcement of housing codes led to destruction of that housing stock and gentrification. Health and safety must be preserved, but don't let the perfect be the enemy of the good.

A5 Code Provisions for ADUs – Aside from the attempts to circumvent statutory allowance of these housing units by cities such as Eugene, conversion of ADUs (and houses and multifamily units) to commercial short-term rentals must be regulated as part of an effective housing program. (See A9, below) These uses are already presumptively approved by statute with respect to urban areas that are zoned for detached single-family dwellings.

A6 and A7 Broaden the Definition of Housing Type and Allow for Single Room Occupancy in Residential Zones – This broadening, which is not required under HB 2001, should include homeless shelters as well. I recommend plan provisions governing these uses so that they may be implemented by land use regulations more easily.

A9 Short-Term Rentals Regulations – Many short-term rental “facilitators” do not willingly disclose their clients, so that there is a high rate of noncompliance with local regulations. Requirements to share that information, coupled with penalties that may be levied against both the renter (perhaps with a “three strikes” policy) and the facilitator should be used as part of ADU housing availability. Assessing and taxing commercial uses should also be considered. If a local government is not regulating short-term rentals, its housing program is deficiency.

A10 Inclusionary Zoning – I fear that the US Supreme Court may find these programs to be a “taking” if they are imposed without some offsetting benefits.

A11 Add Restrictive Covenants to Ensure Affordability – That’s great, but how do you do that? Do you include the requirement as part of the land use approval? Is it an offsetting benefit for an increase in density? Here’s a variation on this tool – Are there grounds to go after existing covenants that are contrary to public policy – such as large lots in areas that need more dense housing? If not, do you condemn them? Moreover, there is the question of enforcement – Portland failed to enforce affordable housing in the South Waterfront Area -- https://www.oregonlive.com/portland/2010/06/portland_leaves_empty_promises.html. The state failed to enforce LIHTC (Low Income Housing Tax Credits) in Rose City Village. <https://www.nhlp.org/wp-content/uploads/State-Court-Invalidates-Decision-to-Release-Property-from-LIHTC-Program-for-Noncompliance-42-Hous.-L.-Bull.-9-Jan.-2012.pdf>. Just because you have an obligation does not mean it will be carried out. Monitoring and enforcement are necessary if these techniques be used.

A13 FAR and Density Transfer Provisions – Monitoring and enforcement are necessary here too.

A19 Community Benefits Districts – As a practical matter, these are useful only in larger cities that can calculate needs and public benefits. A tax on profits is not impossible and can be an increment on the increased value of the land and improvements attributable to the development approval.

A20 High Density Requirements for To-Be-Annexed Land – While annexations may no longer subject to voter approval, that does not prevent a city from making a deal with the landowner to provide benefits in the form of public works in exchange for greater density and the like.

B2 Remove Development Code Impediments for Conversions -- A comparison of the Model Codes to be used for medium and large cities should be a point of comparison. What are the extra items imposed by local codes over and above the state minimums? What are the reasons for keeping them? Are there building code impediments (following the building code revisions required by HB 2001) that should be revised.

B3 Expediting Permitting for Needed Housing Types – I have some concerns here. For some projects, the timeline is 100 days and for the rest it is 120 days. There is a certain amount of noticing, coordination, and review that accompanies the exercise of discretion. If there is no discretion involved, there’s no timeline problem.

B5 Reduce Regulatory Barriers to Lot Division – Subdivisions and Partitions involve public service and facility, transportation issues and the like that do not lend themselves to a non-discretionary process. That is why they are limited land use decisions under ORS 197.195, which joins a more limited process for the exercise of discretion. In any event, no developer can walk into a planning department and demand approval of a land division at the counter. I fail to see what is wrong with the current process.

C1 and C3 Reduce or Exempt SDCs for Needed Housing and Reduce or Exempt SDCs for ADUs – Someone has to pay the costs of improvements funded by SDCs. Other property owners cannot be made to subsidize development of their neighbors. Unless the local government picks up the tab (from its general fund or from housing funds appropriated for that purpose), the improvements will not be adequately funded. There is no free ride.

C2 Modify SDC Fee Schedules – There should already be different schedules for single-family and multi-family housing, due to the different intensities of use to public facilities. You might encourage additional categories for duplexes, triplexes etc. The use of square footage might work, but may be better if joined with use of different categories of residential use. Remember also that a square footage metric may result in the owner or renter of a large residence paying less than the owner of a smaller residence in the same category.

C5 and C6 Waive or Finance Park Impact Fees for Affordable Housing and Publicly Funded Infrastructure Improvements – See responses to C1 and C3, above.

C7 Reconsider Applying Park SDCs (to Affordable Housing Projects) – The justification for this suggestion is as follows:

If there are appropriate levels of parks and open spaces near the project, these impact fees should not be charged or should be assessed at a much lower rate. They are not general funds to be allocated without a nexus to the development.

Lots of people can use various excuses to get out of SDC charges if this kind of thinking prevails. We have viable SDC schemes that apply across the board and do not have differential fees depending on how much one uses a facility or how close they are to the same. Don't undermine the SDC fee system with this kind of special pleading.

I did not respond to the tax categories (D and E).

I hope these comments are helpful.

From: [Andree Tremoulet](#)
To: [TRAVIS Kim * HCS](#); [Stuckmayer, Ethan](#); [Young, Kevin](#); [Garcia, Samuel](#); [Edging, Sean](#)
Cc: ["Allan Lazo"](#); ["Kirsten Blume"](#); ["Louise Dix"](#); ["Marisa Zapata"](#); ["Jean Dahlquist"](#);
[Stephanie.A.Jennings@ci.eugene.or.us](#); ["Ed Sullivan"](#); ["Deb Meihoff | Communitas"](#); ["Mary Kyle McCurdy"](#);
["Jennifer Bragar"](#); ["Taylor Smiley Wolfe"](#)
Subject: Potential data sources for Mid-Term reports
Date: Thursday, June 18, 2020 1:40:20 PM
Attachments: [Costar Market Report for Columbia County, 2015-20.pdf](#)

Greetings---

During today's meeting, we discussed data sources for the Housing Production Strategy midpoint report that might get at tenure and affordability levels of housing produced (thanks, Stephanie, for your suggestions!). I suggested investigating commercially available sources potential subscriptions so that the state could provide data to jurisdictions. **This email is to introduce Jean Dalquist, whom I think could help you investigate some of these data sources**---at least point you in the right direction and maybe generate some sample reports. Jean has been doing work currently for Housing Land Advocates as well as working on projects for Fair Housing Council of Oregon.

Cities will be providing data on the housing produced by unit type on an annual basis in their HB 4006 report. It would be useful to learn more about the affordability levels (rents, sales values) and tenure of the housing produced. **Jean identified three commercial services that could help provide that information for at least a sample of the units produced---Redfin, Zillow and COSTAR.**

As an example, I asked Jean to see if she could figure out the rent levels of new rental properties in Columbia County that entered the market between 2015 and 2020. She knew to look at COSTAR. Within a couple of minutes, she had set her search parameters and generated the attached report. The report has detailed information on rents, vacancy rates, anticipated changes in rents, etc. on two properties in the database that met those parameters.

Jean indicated that it is also possible to create automated dashboard reports that generate aggregated data at specified intervals for specified geographies. In other words, **it may be possible to automatically generate dashboard reports on housing produced, rent levels and sales prices for the HB 2003 cities (or the counties in which they are located) on a regular basis and send those reports to those cities.** It would be up to the cities to review the data and build on it to help address reporting questions about tenure and affordability.

Jean can speak to the data sources that companies like COSTAR use, and how complete or incomplete they might be for your purposes. I am guessing that they deal primarily with unregulated/not subsidized housing, which is great, because you already have state data sources for new subsidized rental housing produced and offers to report on new land trust and Habitat for-sale housing produced.

I chose to ask Jean to generate a report on rental housing because it is notoriously harder to get this data than data for owner-occupied housing. Data for owner-occupied housing is available, too.

Jean (IMHO) is an unusually capable student pursuing a joint degree in planning and real estate at

PSU. She has a passion for data. When I asked her what faculty member is particularly talented in navigating commercial real estate data sources, she identified Julia Freybote <https://www.pdx.edu/sba/julia-freybote> .

I hope that you will consider contacting Jean, who has access to these sources through PSU. After investigating the possibilities, I hope you also consider (perhaps jointly for OHCS and DLCD) purchasing a subscription to the most appropriate services---or even investigating whether an existing state agency already has subscriptions.

Thanks for considering this possibility.

Andrée

Andrée Tremoulet, PhD
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www.commonworksconsulting.com
503.267.9255
Pronouns: she/her/hers ([learn more](#))





Date: May 21, 2020
To: Ethan Stuckmayer, Senior Housing Planner, DLCD
From: Andrée Tremoulet
CC: Samuel De Perio Garcia and Sean Edging, DLCD
Subject: Response to HPSTAC Meeting Packet 5

Thank you for the hard listening and hard work that the DLCD team invested in integrating fair and equitable housing concerns in the most recent draft of the Housing Production Strategy Report requirements and guidance. The attached responses to HPSTAC #5 Discussion Worksheet questions are further refinements that principally touch on the following topics:

- Requiring cities to identify the housing classifications by tenure, affordability, and housing type that they intend to focus on in their strategies.
- Encouraging cities with Consolidated Plans or an Analysis of Impediments/Fair Housing Plan to incorporate resources and actions from these plans in their responses, thus encouraging dialogue and coordination between land use/long range planners and those managing federal housing resources within cities.
- Recommending that staff continue to refine the five questions and get additional input from communities of color and suggesting that gentrification be included for cities where it is a factor.
- Recommending that staff further consider the benefits of incorporating elements of a “fair share” approach to calculating the number of houseless households to avoid encouraging cities that have few houseless households due to a meager service network and strict enforcement of nuisance ordinances to continue those practices.

Thank you for your consideration of these ideas.

Response to HPSTAC Meeting 5 Questions
 Submitted by Andrée Tremoulet
 June 21, 2020

HPSTAC Question 2—Data Points

[#2] Structure of Housing Production Strategy Report - After reviewing the pathway to incorporate equity considerations and homelessness data into the HPS Report, are there any further data points and/or considerations that you feel should be added or re-organized to better reflect minimum compliance and proposed guidance that jurisdictions will need to abide by?

- **Contextualized Housing Need Section:** As a required element, I suggest asking cities to take the final step of identifying which kinds of housing will receive priority attention in their housing strategies. This could be done by tenure/affordability or by housing type, or both ways. Using the affordability levels that appear in DLCD’s list of strategies and the HB 4006 reporting tool housing types, I’d like to offer an approach to accomplishing this as follows:

Step 1: Housing Priorities by Affordability and Tenure: Use the chart below to indicate which categories of housing by tenure and affordability level will be the focus of your city’s housing production strategies. Rank each High, Medium or Low Priority.

	For Rent	For Sale
Homeless (Permanent Supportive Housing)		
Publicly Subsidized 0 - 30% MFI		
Affordable 30 – 80% MFI		
Workforce 80 – 120% MFI		
Market More than 120% MFI		

Step 2: Housing Priorities by Housing Type: Use the chart below to indicate which housing types will be the focus of your city’s housing production strategies. Rank each High, Medium or Low Priority. *[Note to DLCD Staff: ECONorthwest has a graphic that they use to link affordability and tenure to housing types. It might be useful to contact ECONorthwest to ask if the State could use it, with proper attribution, to help planners link the table above to the table below.]*

	For Rent	For Sale
Single-family detached		
Single-family attached		
Duplex		
Accessory Dwelling Units		
Manufactured Homes		
Triplex or fourplex		
Five or more units		

- Contextualized Housing Need Section: Please ensure that the data on Percentage of Rent Burdened Households to be provided by Oregon Housing and Community Services is broken out by race, ethnicity, and disability. The reason this is important is to analyze the degree to which disproportionate housing need is experienced by “protected classes” under Fair Housing. This analysis will help determine if there is a nexus between rent-burdened and race, ethnicity, and disability. If there is a nexus, then the city’s efforts to support the construction of housing to meet the needs of rent-burdened or homeless households could contribute to Affirmatively Furthering Fair Housing. Conversely, if the city does not at least adopt tools, policies and other measures to promote the development of housing for this population, then this lack of effort could represent a failure to affirmatively further Fair Housing.

If the data OHCS provides does not break out the Rent Burdened Households data by race, ethnicity, and disability, then require the city to undertake this analysis, using the Census measure of Households in Poverty as a proxy for Rent Burdened Households, as I suggested in my responses to HPSTAC Meeting Package #4.

- Contextualized Housing Need Section: Please clarify that the socio-economic and demographic trends will include both race and ethnicity.
- Contextualized Housing Need Section: Please consider further whether including consideration of a proportionate share of regional or state homeless counts should be part of the calculation of homeless households for each city. Here’s the reasoning: Let’s say City A provides a robust array of services for people without permanent housing. Let’s say City B, adjacent to or near City A, has not invested in a network of services for people without permanent housing, thus it is very poor, and the city is also known to be a strict enforcer of nuisance codes that actively discourage people without permanent housing from living there. It is probable that more people without permanent housing would choose to live in City A. If we just use the city counts of homeless as the basis for projecting need, then we risk perpetuating the status quo and not putting any pressure on City B to accommodate this population. While I don’t have a particular methodology to suggest (this is not my areas of expertise), I do think that the experts should discuss this issue further.
- Strategies Section: Currently, under Magnitude of Impact, cities are required to discuss (a) the housing need fulfilled by each strategy, (b) the number of housing units that may be created by that strategy, (c) the benefits and burdens created by the strategy for specified groups, and (d) the time frame for the adoption of the strategy. Instead of asking cities to respond to items (a) and (b) by strategy, I suggest that DLCD ask them to organize their response by housing type. It may be advisable to continue to ask cities to respond to (c) and (d) by strategy.

The tables below provide a method for reporting (a) and (b) by housing group and mirror the tables I suggested for the Contextualized Housing Need Section:

Magnitude of Impact of Proposed Strategies Collectively on Housing Need

Estimate the number of housing units that may be created in the next six to eight years and identify the housing strategies your city will use to foster their development. Use a reference number or letter to refer to the strategies in your list.

	Housing for Rent		Housing for Sale	
	Target # of units to be added	Strategies	Target # of units to be added	Strategies
Homeless (Permanent Supportive Housing)				
Publicly Subsidized 0 - 30% MFI				
Affordable 30 – 80% MFI				
Workforce 80 – 120% MFI				
Market More than 120% MFI				

	Housing for Rent		Housing for Sale	
	Target # of units to be added	Strategies	Target # of units to be added	Strategies
Total Housing Units				
Single-family detached				
Single-family attached				
Duplex				
Accessory Dwelling Units				
Manufactured Homes				
Total Single-Family HU				
Triplex or fourplex				
Five or more units				
Total Multifamily HU				

Under the Proposed Guidance column for this section, jurisdictions that have their own Consolidated Plans or Analysis of Impediments/Fair Housing Plans should be encouraged to incorporate actions and investments from these plans in their responses. The jurisdictions with these plans include:

- 14 cities: Albany, Ashland, Beaverton, Bend, Corvallis, Eugene, Grants Pass, Gresham, Hillsboro, Medford, Portland, Redmond, Salem, Springfield
 - 3 counties: Clackamas, Multnomah, and Washington
- **New section on Achieving Fair and Equitable Housing Outcomes:** First, bravo for including this new section. These are good questions, and I hope cities answer them succinctly and directly.

Second, I agree that more discussion should occur about “Opportunity Areas,” including whether the reference should be to the OHCS-identified areas or whether cities might address this question differently.

Third, it may be useful to ask cities to address gentrification/displacement issues in this section if they are issues locally.

With those caveats and comments, I'd like to offer for further discussion the following version of "The Five Questions":

- Opportunity Areas: How is your jurisdiction creating opportunities for households of color and low-income households to live in high opportunity areas, which include areas with a healthy environment, good schools, frequently used businesses, services, community institutions and public amenities, and with convenient access to transportation networks and jobs? This could include improvements to lower-income areas/areas with concentrations of communities of color as well as locating new lower-cost/subsidized housing in high opportunity areas.
- If gentrification or displacement are issues in your city, what is your city doing to enable existing residents and communities to remain in areas with rising real estate values and enhanced public amenities? What are you doing to ensure that their needs are addressed in the new investments?
- Fair Housing---same as current draft
- Homelessness/equitable distribution of services---same current draft
- Opportunities for affordable rental housing and homeownership---same as current draft

Under the Proposed Guidance column for this section, jurisdictions that have their own Consolidated Plans or Analysis of Impediments/Fair Housing Plans should be encouraged to incorporate actions and investments from these plans in the responses to these questions. The affected communities are:

- 14 cities: Albany, Ashland, Beaverton, Bend, Corvallis, Eugene, Grants Pass, Gresham, Hillsboro, Medford, Portland, Redmond, Salem, Springfield
- 3 counties: Clackamas, Multnomah and Washington

HPSTAC Question 3

[#3] Housing Production Strategy Tools - A list of tools/actions/policies that a city may implement to facilitate the production of housing is being compiled at this link: https://docs.google.com/document/d/1wg091os-MPyOML3TYtKu01895xsi47ZMVOhp_18Am8E/edit. Please share this list widely with your networks. The goal is to provide as many possible housing production strategies as possible for future reference as cities begin adopting Housing Production Strategies. This list of strategies will be included in a DLCD guidance document published after rulemaking has concluded. What specific tools/actions/policies should be added to this list?

Thank you for investing time and effort into identifying the affordability levels and tenure of housing likely to be impacted by the tools/actions/policies. I look forward to reviewing and commenting online. But, for now, I wanted to recognize the effort.

HPSTAC Question 5

[#5] Fair and Equitable Housing Midpoint Review - In addition reporting on the strategies a city has implemented or not implemented by the midpoint of the Housing Production Strategy period, cities should reflect on progress made with regards to achieving fair and equitable outcomes. Do you believe the 5 questions listed above are the right questions to be asking midpoint? If not, what other questions do you propose? Or, identify another method the department could deploy to address these outcomes.

- Please revise to include the five questions once a new version is available.
- Cities should also report on the housing that has been produced. On page 37 of the HPSTAC #5 meeting packet, staff says that jurisdictions will also be required to report on “how many units of each tenure and affordability level were produced. Ultimately, the purpose of this midpoint review is to get a better understanding of housing production strategy outcomes via a simplified trend analysis of units built and comparing it to a gap analysis of housing need.” Super! Three questions:
 - What data sources should planners use? It is notoriously hard to obtain this data. The data provided annually for the HB 4006 report is by housing type (e.g., single family detached, etc.) and not by tenure or affordability level. But to address whether the housing needs of households are being met, data are needed on the tenure and affordability level. We know that data could be made available on new rent-restricted units and land trust units through OHCS in partnership with the land trusts in the state, but what about the rest of the housing units?
 - How granular will the reporting be? Do you have a chart or table that planners should use?
- The Midpoint Review could be an opportunity for cities to amend/adjust their Housing Production Strategy based on outcomes so far and changing economic conditions. Staff could provide a red-lined/track changes version of their HPS showing proposed changes and provide a brief narrative explaining why changes are being made.

Ethan Stuckmayer
 Oregon Department of Land Conservation and Development
 June 11, 2020

Re: HB 2001 LCMC off-street parking requirements

Sightline is the Pacific Northwest's sustainability think tank. We were a central part of the coalition of housing advocates, environmentalists, anti-segregation activists and nonprofit and for-profit builders that supported passage of House Bill 2001. In the last year, this bill has already been a model for legislation introduced in six other states. We see its implementation as crucial to its local effectiveness, durability and national impact.

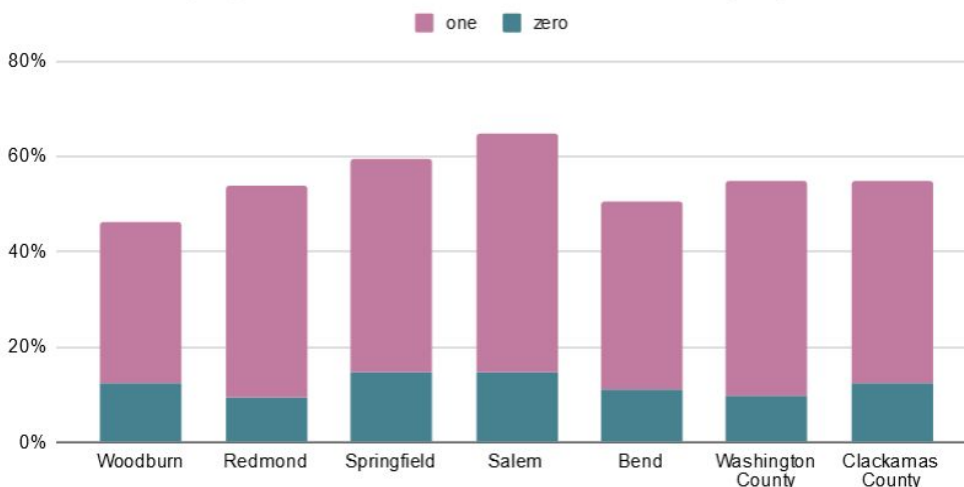
At the request of several members of DLCD's advisory committees, and informed by the new analysis from ECONorthwest, we're writing to urge a new option for parking standards in future discussion drafts of its model code for large cities.

Recommendation for off-street parking requirements: The minimum compliance standard should legalize triplexes that create exactly two off-street parking spaces, and fourplexes that create exactly three. In addition, the state should require cities to let any adequate curbside space adjacent to the property count toward any parking that may be required beyond the first two off-street spaces.

Background

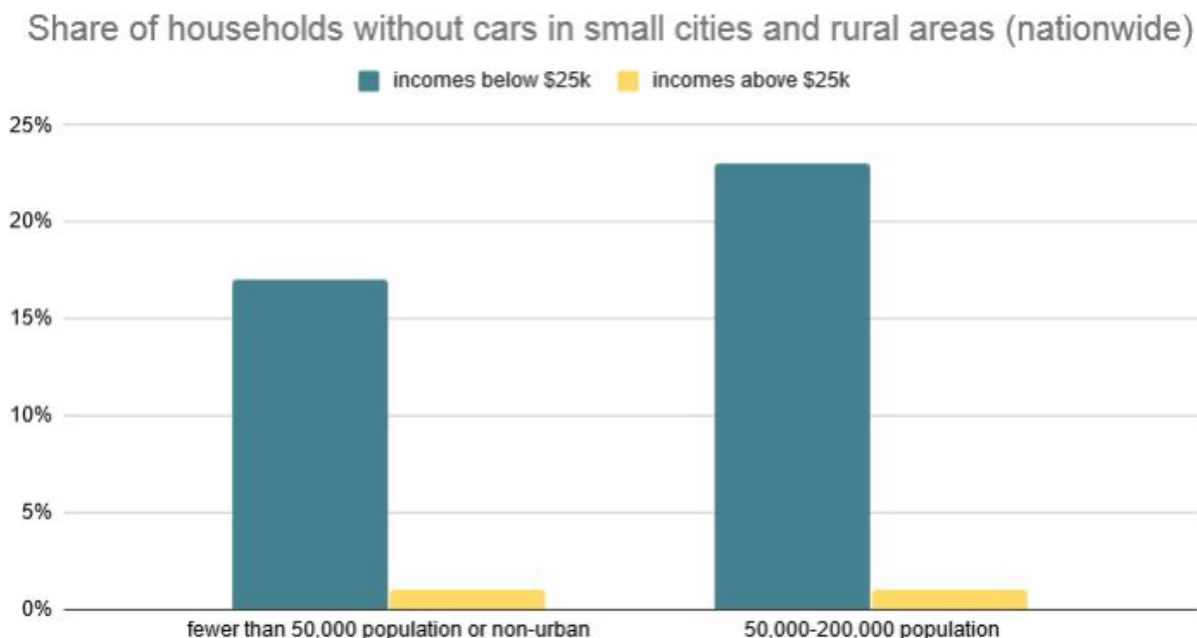
Point 1: Zero-car households are common everywhere in Oregon. In almost every jurisdiction covered by House Bill 2001's "larger cities" category, 10%-15% of tenant households own zero cars, and about half of tenant households, or more, own either one or zero.

Car ownership by tenant households in selected Oregon jurisdictions



source: American Community Survey 2014-2018.

This finding is not attributable to standard survey error, because it shows up independently in every geographic ACS sample. Nor is this unusual for the United States. It's simply concentrated among low-income people:



Source: National Household Transportation Survey 2017.

Many tenant households, of course, own more than one car. Every zoning code in Oregon gives the market plenty of room to serve such households: very few locations set any cap on the amount of new off-street parking. Whatever the results of this rulemaking process, the overwhelming majority of new homes built under HB2001 will probably have dedicated off-street parking spaces, simply because many people prefer them. Every homeseeker with a car thinks about parking, and therefore so does every developer.

But zero-car households are *not* nearly as well-served by the market -- largely because jurisdictions have made it illegal for the market to serve their needs, even in many neighborhoods where living without a car is a viable option for some.

Given these figures, it would be both exclusionary and unreasonable for cities to require households to pay for parking they do not need in order to live in a particular neighborhood. Under HB 2001, new triplexes and fourplexes must be allowed to exist even if they include more homes than they do off-street parking spaces.

Point 2: Most Oregonians would probably prefer buildings legalized by HB 2001 to be attractive.

Requiring four off-street parking spots all but ensures that a fourplex property will be unattractive. This is because buildings with fewer on-site parking spaces have much more room for trees and other plants.

For example, here's a corner triplex with a single shared parking space (around the back, as seen in the second photo).



Here's a fourplex with two off-street parking spaces with a shared driveway around the side:



Compare these to the below fourplex with one space per unit, even one with a narrowed 32-foot driveway like the one encouraged elsewhere in the proposed model code:



Here's a different approach to a 1:1 parking ratio, with a separate curb cut for every unit:



If jurisdictions are allowed to ban parking ratios below 1:1, many will. If they do, they will be making the first and second building types illegal in favor of the third and fourth types. They will then blame the state for the results.

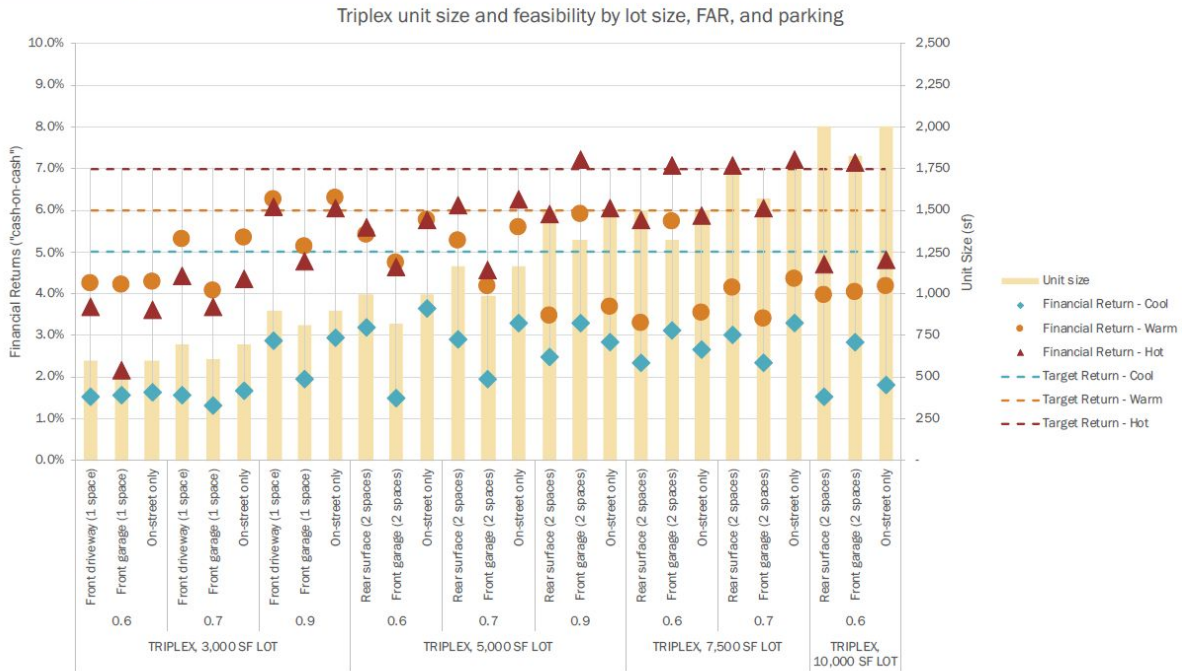
We'd ask the committee and DLCD staff to reflect on the likely political reaction to buildings resembling the above -- especially in light of the fact that each curb cut in the above examples eliminates public parking spaces from the street, essentially privatizing that space.

DLCD can't require new buildings to be physically attractive. But it can at least make more physically attractive options legal.

Point 3: The state's new economic analysis just concluded that fourplexes will be particularly important to housing production under HB 2001. The June 15 analysis commissioned from ECONorthwest contains encouraging estimates that the first two off-street parking spaces aren't a clear barrier to the viability of new housing.

Unfortunately, it also concluded that even in hot housing markets and even with just two off-street parking spaces, triplexes will be barely profitable enough to attract investment:

Exhibit 2: Triplex Results Summary by Lot Size, FAR, and Parking



Source: ECONorthwest

This means the effectiveness of HB 2001 at creating any meaningful amount of infill in larger and metro cities will depend largely on fourplexes. Happily, these are more viable, because there's one more household with whom to share the land cost:

Exhibit 1: Fourplex Results Summary by Lot Size, FAR, and Parking



Source: ECONorthwest

However, this analysis assumes no more than two off-street parking spaces. Higher parking counts, the analysis warned, would make many new infill options geometrically impossible to build because so much land would be dedicated to pavement:

If more parking spaces were required than we tested (e.g., 1 space per unit), this would have more impacts on the possible building footprint and could trigger regulations that require more circulation area (e.g., requiring a turnaround area so that cars do not back out of the driveway). On small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint.

This analysis suggests that if the state were to allow cities to mandate more than two off-street parking spaces, it would be allowing cities to essentially prevent almost all triplex *and* fourplex infill.

Oregon should ensure that its codes align with state policies, especially GHG emission reductions.

Given that the state has many policy goals to reduce vehicle miles traveled and avoid artificially inflating housing costs, it only makes sense to give Oregonians the option to use their land for something other than car storage.

The overwhelming majority of new triplexes and fourplexes in Oregon's larger cities and the Portland metro area can be expected to include off-street parking no matter what these rules say. The goal of thoughtful zoning codes, though, should be to at least leave the door open to any entrepreneurs, now and in the future, who *can* find ways to build and sell homes with less on-site parking, thereby helping some Oregon neighborhoods gradually become more affordable and less auto-dependent in places where this is possible.

The Intergovernmental Panel on Climate Change [estimates](#) that even with rapid electrification of the world's auto fleet, vehicle miles traveled per person will also need to decline by about 20% by 2050 in order to hold warming below 1.5 degrees Celsius.

The text of House Bill 2001 instructs the state to prevent cities from "discouraging the development of all middle housing types permitted in the area through unreasonable costs or delay." Gov. Brown's executive order instructs DLCD to "exercise any and all authority and discretion vested in them by law to help facilitate Oregon's achievement of the GHG emissions reduction goals." The May 15 "[Every Mile Counts](#)" report on implementation of the STS explicitly commits DLCD to parking management action to reduce vehicle miles traveled per capita.

Rules that not merely allow but *require* newly built homes to ignore the needs of 10%-15% of renters are not reasonable. Such rules would also, by law, prevent some neighborhoods from gradually evolving to become less car-dependent. Allowing such bans on incremental car-lite infill would clearly undermine the state's emissions reduction goals.

In summary, we see no reasonable rationale for *any* off-street parking mandates at the city level. Concerns about the need for auto parking are legitimate, but (as LCDC members unanimously observed at their May meeting) nothing in this code prevents the construction of adequate parking. Builders have every incentive to either include adequate parking or else choose a different location for their investment.

For the purposes of this conversation, a *more* reasonable "minimum compliance" standard for Oregon's larger and metro cities would allow jurisdictions to require a parking ratio of no more than 0.6, while allowing adjacent on-street parking spaces to count toward any required space beyond the second.

This would allow jurisdictions to require **up to two off-street parking spaces for a triplex** and **up to three for a fourplex**, with **one of a fourplex's three spaces** allowed to fall in adjacent on-street space if and only if such curbside space exists.

Michael Andersen
senior researcher, housing and transportation
Sightline Institute

1001 SE Water Ave Suite 205
Portland, OR 97214



June 25, 2020

Via email

Ethan Stuckmayer
Senior Planner of Housing Programs
DLCD

Dear Mr. Stuckmayer:

DLCD is in the process of rulemaking for House Bill 2001. The City of Wilsonville is following the rulemaking closely and has so far not commented and is overall supportive of the great work that is being done. However, we see items emerging that cause concern and drive us to comment.

Discussion is scheduled at today's MCTAC meeting on the topic of "areas zoned". We regret these comments not being sent earlier, but please share them with the MCTAC and RAC and incorporate them into the record of public comments. After reviewing the packet and the two approaches to defining "areas" and then re-reviewing HB 2001, City of Wilsonville staff request the committee consider a different option.

While a whittle away approach may be the RAC's preference for the model middle housing code, due to other assumptions in the model code, the minimum compliance needs to be rethought on performance measures to allow cities the ability to use creativity and adapt to local circumstances to ensure the best outcomes. While there have been stated concerns that cities will try to weasel themselves into minimal compliance, the City encourages the committee to be mindful of the many jurisdictions that are working with state and regional partners to increase housing variety, and that they may very well be hampered from meeting the shared goals by being too specific on minimum compliance.

Cities vary greatly by the era and patterns of development, and need flexibility for different solutions. A city consisting primarily of single-family plats from the early 20th century differs substantially from a city, like Wilsonville, consisting primarily of master planned PUD's incorporating a variety of housing built in the late 20th and early 21st century. Wilsonville has a much wider variety of housing than most communities in Oregon. As recently published in the City's annual housing report the City's housing includes: 50.3% Apartments and Condos, 40.6% Detached Single-family, and 9.1% Middle Housing and Mobile Homes. While more diverse than other suburban cities, Wilsonville is working hard to integrate more middle housing and more housing options.

As outlined above, City staff is concerned that the proposed whittle approach does not allow sufficient flexibility, particularly for a master planning approach or other less traditional (and exclusionary) approaches. Master planned communities can plan for and require a certain amount of middle housing, often producing more middle housing than considering each lot the same and leaving it to market forces to determine the type of unit on a lot. The latter non-master planning approach does not provide any certainty for middle housing, particularly if the profit margin is less than detached single-family.

A lens we recommend decision-makers use is whether Villebois, or other award-winning master planned neighborhoods in the region, could be built under the proposal. Villebois is a master planned "residential area" with over 2,600 units that includes 8 different housing types (together totaling over 1400 units) that are not detached single-family, including carriage homes, fourplexes, row houses including many 5-6 unit buildings, and integrated mental health housing. The housing forms a transect of density and height thoughtfully planned around an integrated parks system and village center. Using the whittle approach, from our understanding of the discussions thus far, Villebois would be a very different place with significantly less variety of housing as the Villebois code would not comply with approaches suggested thus far. Yet, as constructed this community meets the intent of HB 2001, providing a diversity of housing types at a variety of price points. Using characteristics defined at a lot level rather than at a neighborhood level removes local flexibility and creativity; relies on the market, which would not guarantee the type of unit built on each lot; and reduces the ability to intentionally plan communities with the full transect of development types.

Given these concerns, we have considered the balloon approach. For Wilsonville and other smaller jurisdictions the balloon approach doesn't work because it would be hard to find the key differing factors to include some single-family areas and not others. It also seems this would not meet the intent of House Bill 2001 allowing some potentially large swaths of single-family areas to remain exclusionary of middle housing and have a potentially similar effect of not achieving the transects of residential development types we are seeking.

Wilsonville requests a new, alternative approach to minimal compliance that focuses on performance measures over a broader geography. However, if a whittle type approach continues to be pursued, we recommend "positive performance whittling" also be allowed in addition to the "inappropriate land whittling" put forward thus far. The positive performance whittling could push developers to produce more middle housing, in order to whittle out other land within a certain area. An example of "positive performance whittling" is if a PUD or legislative master plan is guaranteeing a certain level of middle housing meeting or exceeding state-set expectations planned in portion of a master plan area; then other portions of the PUD/master plan planned for single-family housing/duplexes can be whittled away. This performance based approach would provide more certainty for infrastructure planning, housing production strategies, and marketing purposes. An example of such potential code language would be:

Allowed uses:

- a. Middle housing as defined . . . except if the following is true:
 1. The subject land is occupied by a single-family dwelling unit or duplex within a Planned Unit Development or Legislative Master Plan with (or required to have) at least six different housing types, besides duplexes and single-family dwelling units, cumulatively making up at least 1/2 of all housing units and non-duplex middle housing (as defined in ORS . . .) making up at least 15% of all housing units.

In conclusion, the City wishes to thank you for your time and dedication to carefully considering these important matters to ensure our communities are more welcoming to all. Wilsonville staff is available for questions or additional discussion on potential language ideas and other aspects of working through to find the best long-term solution for minimal compliance.

Sincerely



Daniel Pauly, AICP
Planning Manager
503-570-1536
pauly@ci.wilsonville.or.us

From: [Ellen Miller](#)
To: [Stuckmayer, Ethan](#)
Cc: [Edging, Sean](#); [Young, Kevin](#); [Mansolillo, Robert](#)
Subject: FAR Calculation in Rule
Date: Thursday, June 25, 2020 10:54:07 AM

Hi Ethan,

Listening to Matt's comments on defining FAR in rule, I realized that I never sent our proposal. Please see below and let me know if you have any clarifying questions.

A suggested approach: Floor area is defined by actual livable floor space. Calculation should not include garage. Count the stairs once, measure from the inside of the walls of the living unit and deduct for interior walls. For example a 10' - 2 x 4 wall is (10' x 4") or 3.33'. You would deduct this from the FAR. If you have a wall sitting on the floor it is not an actual floor or usable space.

Thank you!

Sincerely,

Ellen Miller

Government Affairs Director

Cell: 503-409-9502

Office: 503-378-9066 x108

ellen@oregonhba.com



2075 Madrona Avenue SE, Suite 150

Salem, OR 97302

From: [Ed Sullivan](#)
To: [Jennifer Bragar](#); [Taylor Smiley Wolfe](#); [Stuckmayer, Ethan](#); [Young, Kevin](#); [Mary Kyle McCurdy](#); [Andree Tremoulet](#); [SRINIVASAN Kate * HCS](#); [Howard, Gordon](#)
Subject: ADU Case Decided Today
Date: Wednesday, July 1, 2020 10:06:13 AM
Attachments: [Kamps-Hughes v City of Eugene.pdf](#)

Attached, please find the Kamps-Hughes v. City of Eugene case, decided today, in which the Court of Appeals upheld LUBA's remand of the City's denial of zoning verification for an ADU that (LUBA ruled) did not involve "reasonable local regulations relating to siting and design." The Court concluded:

To put it another way, in enacting ORS 197.312(5)(a), the legislature made a statewide policy decision that, in cities and counties over a certain size, it is desirable as a matter of urban planning to allow one ADU per single-family dwelling in areas within a UGB that are zoned for detached single-family dwellings, thus increasing the density of housing development in those areas. The considerations underlying the four Eugene Code standards at issue in this appeal minimizing density and thereby limiting traffic, increasing livability, and preserving neighborhood character—are essentially policy arguments against ADU development in existing residential neighborhoods. The city's proposed construction of ORS 197.312(5)(a) would effectively disregard the legislature's own statewide policy determination in the guise of "siting" regulations.

This decision appears to bode well for the state's pro-housing agenda. To put it another way, in enacting ORS 197.312(5)(a), the legislature made a statewide policy decision that, in cit

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IN THE COURT OF APPEALS OF THE
STATE OF OREGON

Nicholas KAMPS-HUGHES,
Respondent,

v.

CITY OF EUGENE,
Petitioner,
and

Paul T. CONTE,
Intervenor-Respondent below.

Land Use Board of Appeals
2019115; A173517

Submitted April 24, 2020.

Emily N. Jerome filed the brief for petitioner.

Bill Kloos and Law Office of Bill Kloos PC filed the brief for respondent.

Christopher D. Crean and Beery, Elsner & Hammond, LLP, filed the brief *amicus curiae* for League of Oregon Cities.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Aoyagi, Judge.

AOYAGI, J.

Affirmed.

AOYAGI, J.

ORS 197.312(5)(a) provides that cities and counties over a certain size “shall allow in areas within the urban growth boundary [(UGB)] that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit [(ADU)] for each detached single-family dwelling, subject to reasonable local regulations *relating to siting and design*.” (Emphasis added.)¹ Kamps-Hughes, who wants to build an ADU on his property, requested zone verification from the City of Eugene, including asking the city to identify Eugene Code (EC) provisions that it considers applicable to his ADU proposal. In response, the city identified 11 standards that it views as relating to “siting and design” and that effectively preclude Kamps-Hughes from building an ADU. Kamps-Hughes appealed to the Land Use Board of Appeals (LUBA), asserting that, as to six of the standards, the city is misinterpreting the statutory phrase “relating to siting and design” and thus imposing impermissible restrictions on ADU development. In its final order, LUBA agreed with Kamps-Hughes as to four of the standards. The city seeks judicial review, arguing that LUBA misconstrued ORS 197.312(5). We affirm.

FACTS

The pertinent facts are set out in LUBA’s final order and are unchallenged. Kamps-Hughes owns real property in the Fairmount neighborhood of Eugene. The property is zoned Low Density Residential (R-1), has a lot size of 5,663 square feet (72.9 feet by 80 feet), and is accessible only via an alleyway. There is a single-family dwelling on the property—a two-story, four-bedroom house totaling 1,680 square feet—that is currently used as a residential rental.

This appeal arises from Kamps-Hughes’ ongoing efforts to obtain verification from the city as to whether he can build a detached ADU on his property. Kamps-Hughes first submitted a zone-verification request in July 2018,

¹ ORS 197.312 has been amended since this case began, but the amendments do not affect our analysis, so all citations to ORS 197.312 are to the current statute. Similarly, certain Eugene Code provisions cited herein have been amended since this case began, but those amendments do not affect our analysis, so all citations to the Eugene Code are to the current code.

seeking to resolve that question. *See* EC 9.1080 (describing zone verification as a process “used by the city to evaluate whether a proposed building or land use activity would be a permitted use or subject to land use application approval or special standards applicable to the category of use and the zone of property”). In response, the city planner issued a zone-verification decision stating that a detached ADU was not permitted on the property because a Eugene Code provision prohibits ADUs on alley-access lots.

Kamps-Hughes appealed to LUBA, arguing that the city planner had failed to apply ORS 197.312(5)(a), enacted in 2017, which provides:

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

LUBA agreed with Kamps-Hughes that the city planner had erred in not applying ORS 197.312(5) and remanded for her to do so. Meanwhile, Kamps-Hughes filed a second zone-verification request in December 2018.

On remand, the city planner issued a zone-verification decision that Kamps-Hughes’s proposed second dwelling was not a permitted use in the R-1 zone and did not qualify as an ADU under ORS 197.312(5). Kamps-Hughes appealed to LUBA. LUBA concluded that the city planner had misconstrued ORS 197.312(5), that the proposed second dwelling met the statutory definition of an ADU, and that the city therefore had to allow the proposed ADU, subject only to “reasonable local regulations relating to siting and design.” ORS 197.312(5)(a). LUBA remanded to the city, expressing no opinion as to what qualified as “reasonable local regulations relating to siting and design,” because the city had yet to apply any such regulations.

On remand, the city planner issued a third zone-verification decision, this time addressing particular Eugene Code provisions that the city would apply to Kamps-Hughes’s proposed ADU, including 11 standards that the

city considers “reasonable local regulations relating to siting and design.” The practical effect of those standards is to preclude Kamps-Hughes from building an ADU on his property. Kamps-Hughes again appealed to LUBA, arguing, among other things, that six of the standards do not relate to “siting and design” and therefore constitute impermissible local restrictions on ADU development. In response, the city argued that all six standards relate to the “siting and design” of ADUs and thus are permissible restrictions under ORS 197.312(5)(a).

LUBA agreed with Kamps-Hughes that four of the standards do not relate to “siting and design” and that their application to Kamps-Hughes’s ADU proposal therefore is inconsistent with ORS 197.312(5)(a).² Those four standards are:

- a prohibition on new ADUs on lots accessed only by an alleyway, EC 9.2741(2) and 9.2751(18)(a)(2);
- a minimum lot-size requirement of 7,500 square feet, EC 9.2751(17)(c)(1);
- a minimum lot-dimension requirement of 45 feet by 45 feet, EC 9.2751(17)(c)(2); and
- occupancy limits for an ADU, EC 9.2751(17)(c)(7).

In short, the city had argued to LUBA that those four standards relate to “siting” because they relate to “where in each of the city’s residential zones ADUs are allowed based on factors such as traffic, livability, and existing density,” whereas Kamps-Hughes had argued that they do not relate to “siting” because regulations “relating to siting” means regulations that “specify the location of an ADU *on a site*,” which none of those four standards do. LUBA agreed with Kamps-Hughes and rejected the city’s more expansive view of “siting.”³

² LUBA agreed with the city that the other two challenged standards *do* relate to siting and design. Because Kamps-Hughes has not cross-appealed and does not challenge that determination, we do not discuss those other two standards.

³ Although not at issue on appeal, we note that, while LUBA agreed with Kamps-Hughes that four of the city’s standards for ADU development are inconsistent with ORS 197.312(5)(a), LUBA rejected Kamps-Hughes’s separate

The city appeals LUBA's final order, asserting a single assignment of error in which it challenges LUBA's construction of ORS 197.312(5).

ANALYSIS

We will reverse LUBA's order if it is "unlawful in substance." ORS 197.850(9)(a); *Columbia Pacific v. City of Portland*, 289 Or App 739, 745, 412 P3d 258, *rev den*, 363 Or 390 (2018). In this case, our task is to determine whether LUBA's construction of ORS 197.312(5) is legally correct, as relevant to whether the city may apply the four aforementioned standards to ADU development without contravening the statute. Toward that end, "we employ our usual methodology to determine the legislature's intention in enacting a statute by looking at the text of the statute in context, along with any useful legislative history." *Oregon Mutual Ins. Co. v. Certain Underwriters*, 295 Or App 790, 795, 437 P3d 232 (2019).

As a preliminary matter, we must determine what portion of ORS 197.312(5) is at issue. In its opening brief, the city asserts that the "first interpretative" issue for us is to construe ORS 197.312(5)(b) to determine whether Kamps-Hughes's proposed second dwelling meetings the statutory definition of an ADU. Kamps-Hughes responds that that issue is not properly before us, because LUBA decided in a previous final order that Kamps-Hughes's proposed second dwelling *does* meet the statutory definition of an ADU, and the city did not seek judicial review of that order. Relatedly, Kamps-Hughes notes that, because that issue had already been decided in an earlier proceeding, the parties did not brief it to LUBA in this proceeding, nor did LUBA address it. We agree with Kamps-Hughes that the ADU-definitional issue is not reviewable in this appeal. An appellate court cannot "review legal issues that LUBA decided, not in the order under review, but in an earlier order in the same case, for which judicial review was not sought." *Beck v. City of Tillamook*, 313 Or 148, 151, 831 P2d 678 (1992). We therefore

argument (which it described as Kamps-Hughes's "major premise") that ORS 197.312(5)(a) precludes any local regulation that in effect prevents the development of at least one ADU on each lot with a single-family dwelling, even if the regulation is "reasonable" and relates to "siting and design."

accept as established that Kamps-Hughes's second dwelling is an ADU under ORS 197.312(5)(b).

What *is* properly before us is the city's argument that LUBA misconstrued the phrase "reasonable local regulations relating to siting and design" in ORS 197.312(5)(a). The crux of that argument is that LUBA erred in adopting Kamps-Hughes's interpretation of the word "siting," instead of the city's interpretation of the word "siting," although the city also makes arguments about the words "reasonable" and "relating to," to the effect that they provide context for the word "siting" that supports the city's interpretation of "siting." Kamps-Hughes maintains that LUBA did not err and that LUBA's construction is consistent with the text, context, and legislative purpose.

Notably, the meaning of "design" is not in dispute. The city argues, Kamps-Hughes implicitly agrees, and we too agree that the legislature intended "relating to siting and design" to be read disjunctively. That is, with respect to the development of ADUs, ORS 197.312(5)(a) permits reasonable local regulations that relate to siting, design, or both. *See Webster's Third New Int'l Dictionary* 80 (unabridged ed 2002) (defining "and" to include "reference to either or both of two alternatives *** esp. in legal language when also plainly intended to mean *or*" (emphasis in original)); *see also, e.g., Ollilo v. Clatskanie P. U. D.*, 170 Or 173, 180, 132 P2d 416 (1942) ("[A]nd' may be construed to mean 'or' when necessary to effectuate the intention of the legislature and to avoid an unreasonable or absurd result[.]"). In this case, the city argues that the four standards at issue relate only to "siting," not "design," so we limit our analysis to whether LUBA correctly construed the phrase "relating to siting."

We begin with the statutory text, as "there is no more persuasive evidence of the intent of the legislature." *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009). As previously described, ORS 197.312(5)(a) provides that "[a] city with a population greater than 2,500 or a county with a population greater than 15,000"—which it is undisputed includes the City of Eugene—"shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one

accessory dwelling unit for each detached single-family dwelling, *subject to reasonable local regulations relating to siting and design.*” (Emphasis added.)

The word “siting” is not defined in the statutory scheme, so LUBA looked to a dictionary to discern its “plain, natural, and ordinary meaning.” *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993) (as a rule of statutory construction, “words of common usage typically should be given their plain, natural, and ordinary meaning”). Noting that “siting” is a gerund derived from “site,” LUBA correctly identified the relevant common definition of “site” as “**2 a** : the local position of building *** either constructed or to be constructed esp. in connection with its surroundings *** **b** : a space of ground occupied or to be occupied by a building *** **c** : land made suitable for building purposes by dividing into lots, laying out streets, and providing facilities.” *Webster’s* at 2128.

In LUBA’s view, “the dictionary definition of the word ‘site’ is specific to a particular property, and not to a wide area, and supports an interpretation of the word ‘siting’ as relating to an ADU’s location or placement on a property that includes a single-family dwelling.” In its final order, LUBA cites “examples” of “typical siting regulation[s]” as including “a setback that requires a building located on a property to be constructed some specified distance from a marker, such as a property line”; “a requirement that development not occur in a wetland or otherwise environmentally sensitive area or inside a floodplain”; or “an access site distance requirement to ensure safe ingress and egress.”

The city does not contest that LUBA’s interpretation is one meaning of “siting.” Indeed, the city itself uses “siting” in that manner in its own brief, stating, for example, that, under the Eugene Code, “only one single-family dwelling may be sited” on an alley-access lot. The city argues, however, that LUBA erroneously relied *solely* on the common meaning of the word and failed to consider that “siting” has a “a technical meaning in the land use arena” that must also be considered. See *Friends of Yamhill County v. Yamhill County*, 301 Or App 726, 733, 458 P3d 1130 (2020) (“There are times, however, when undefined statutory terms carry

a more technical meaning, particularly when they are used as terms of art in a specialized area of the law.”). The city argues that the “technical meaning” of “siting” is “clear from its abundant use through the State’s land use laws,” and the city and *amicus curiae* League of Oregon Cities (LOC) cite various statutes that use the word “siting” to describe the placement of things within a larger area, rather than on an individual lot. For example, ORS 197.296(6)(a) requires a city to amend its UGB in certain circumstances to “include sufficient land reasonably necessary to accommodate the siting of new public school facilities.”

We agree with the city that “siting” may refer to the placement of a particular type of facility or building within a larger area (such as the area within a UGB) or may refer to the placement of a facility or building within a smaller area (such as the area within an individual lot). In our view, however, those dual possibilities are both consistent with the dictionary definition of “site.” To the extent LUBA viewed the dictionary definition otherwise, we diverge on that point. We instead agree with the city that the word “siting,” in isolation, could refer to the siting of ADUs within areas of the city zoned for detached single-family dwellings, the siting of ADUs on individual lots, or both.⁴ The question is which meaning the legislature intended, which requires us to look to context and any helpful legislative history.

The context of “siting” supports LUBA’s construction. Most significantly, ORS 197.312(5)(a) requires cities and counties over a certain size to allow, in areas within their UGBs that are zoned for detached single-family dwellings, “the development of at least one [ADU] for each detached single-family dwelling,” subject only to reasonable local regulations relating to siting and design. (Emphasis added.) The specificity of that provision is telling. It focuses on individual single-family dwellings, which is consistent with an “individual lot” view of siting. Moreover, the express imposition of a one-to-one allowance ratio defeats the city’s

⁴ Although the city never says so expressly, we understand it to be arguing that “siting” in ORS 197.312(5)(a) encompasses *both* types of siting. That is, we understand the city to view ORS 197.312(5)(a) as allowing it to regulate where ADUs are placed within areas of the city zoned for detached single-family dwellings *and* to regulate where ADUs are placed on individual lots.

specific proposed construction. As we understand it, the city is relying on its interpretation of “siting” to posit a construction of ORS 197.312(5)(a) under which the city could effectively ignore the statutory one-to-one allowance ratio and impose any “reasonable” limitation on where ADUs may be built within areas zoned for single-family dwellings, even if it resulted in the allowance of far fewer than one ADU per single-family dwelling. The city’s proposed construction would thus effectively read the one-to-one allowance ratio out of the statute.

That does not entirely resolve the issue, however, because there is a potentially plausible variation on the city’s argument that would use the city’s interpretation of “siting” but still give effect to the one-to-one allowance ratio. Specifically, one could read ORS 197.312(5)(a) as giving cities and counties authority to regulate which lots within areas zoned for single-family dwellings are allowed to have ADUs by application of a broad range of “siting” regulations, so long as the total ratio of allowed ADUs to single-family dwellings remained one-to-one. Under that reading, for example, the city could prohibit ADUs on 50 percent of the lots in an area within its UGB that is zoned for detached single-family dwellings, by application of minimum lot-size requirements and the like, so long as the city allowed at least *two* ADUs on the remaining 50 percent of the lots in that area, to satisfy the one-to-one allowance ratio.

Although it is possible that that is what the legislature intended, it seems unlikely. LUBA’s construction of ORS 197.312(5)(a) is relatively straightforward and easy to apply. It requires cities and counties to allow the development of at least one ADU per detached single-family dwelling in areas within the UGB zoned for detached single-family dwellings, subject only to reasonable local regulations as to where ADUs may be placed on individual lots and their design. By contrast, an alternative construction that would incorporate the city’s interpretation of “siting” while still giving effect to the allowance ratio—that cities and counties must allow the development of at least one ADU per detached single-family dwelling in areas within the UGB zoned for detached single-family dwellings, but that they have broad discretion

to decide where ADUs may be placed throughout those areas, as long as the ultimate ratio is one-to-one—would be impractical to apply, particularly with regard to ensuring compliance with the allowance ratio. No one is championing such a difficult-to-apply construction of ORS 197.312(5)(a), and we conclude that the legislature more likely intended LUBA’s construction than that one.⁵

As for the city’s argument (supported by LOC) that there are far more Oregon statutes that use “siting” to refer to “siting” within a larger area—such as statutes that pertain to the “siting” of new airports, new corrections facilities, destination resorts on the Metolius River, dwellings and other structures in landslide areas, new school facilities, wineries, and energy facilities⁶—than there are Oregon statutes that use “siting” to refer to siting limitations on individual lots, we do not find that argument persuasive. For one thing, we do not understand the city to be arguing that “siting” does *not* include siting on a lot but, rather, that it also can mean siting in a larger area. *See* 305 Or App at 232 n 4. For another thing, it is entirely unsurprising that the state legislature would tend to concern itself with overall urban planning and with legislation that ensures adequate public facilities in larger areas, while leaving regulation at the individual-lot level to local authorities. Indeed, that is precisely what ORS 197.312(5) does: it reflects the legislature’s general urban-planning policy decision to promote ADU development by allowing at least one ADU per single-family dwelling in areas zoned for detached single-family dwellings, but it leaves to cities and counties the task of regulating (reasonably) where ADUs may be sited on individual lots and how they are designed.

⁵ Of course, as previously noted, LUBA rejected Kamps-Hughes’s argument that the statute literally requires the city to allow at least one ADU on *every* lot, and we do not mean to suggest that we disagree with that conclusion. To the contrary, we express no opinion on that issue, as it is not before us. Our point is merely that the practical realities of the one-to-one allowance ratio make it unlikely that the legislature intended “siting” to be interpreted in a way that would allow the city to preclude ADU development on many lots and thus make it very complicated to apply and enforce the express allowance ratio.

⁶ In providing examples from the city’s and LOC’s briefing, we do not necessarily agree with the city’s and LOC’s express or implied construction of all of the relevant statutes and express no opinion as to the correct construction of any one of those statutes.

Finally, LUBA's construction is the most consistent with the legislature's purpose to increase the availability of affordable housing. ORS 197.295 to 197.314 are sometimes referred to as Oregon's "needed housing statutes." *Warren v. Washington County*, 296 Or App 595, 597, 439 P3d 581, *rev den*, 365 Or 502 (2019). In 2017, the legislature amended a number of those statutes, including adding ORS 197.312(5). The addition of ORS 197.312(5), as well as other aspects of that legislation, "reflect an intention to promote certain housing development":

"For example, the legislation includes provisions that, under specified circumstances, impose relatively short timelines for processing applications for development of affordable multifamily housing, prohibit counties from reducing the density associated with certain proposed housing developments, redefine 'needed housing' to expressly address 'affordability] to households within the county with a variety of incomes,' *require certain municipalities to allow accessory dwelling units*, and permit places of worship to use their real property to provide affordable housing. Or Laws 2017, ch 745, §§ 1, 2, 3, 4, 6, 7, 8. Each of those provisions may be viewed as promoting housing development ***."

Warren, 296 Or App at 600 (emphasis added).⁷

Given that the general purpose of the legislation was to promote housing development (including denser housing development) and that the specific purpose of ORS 197.312(5) was to permit more ADU development, we agree with LUBA that the city's "wide ranging definition of a siting regulation as one that determines where in areas of the city zoned for residential development ADUs can be developed is not consistent with the legislature's intent to create more housing and more housing types, including more ADUs, because a city could effectively prohibit development of ADUs in most areas of a city through adoption or application of minimum lot sizes" and the like. Although a modified version of the city's proposed construction—adopting the city's interpretation of "siting" but giving effect to the one-to-one allowance ratio—would be consistent with the legislative purpose, its

⁷ Beyond the general purpose of the 2017 legislation, the parties have not identified, and we are not aware of, any useful legislative history of ORS 197.312(5)(a).

impracticality leads us to believe that the legislature did not intend that construction.

To put it another way, in enacting ORS 197.312(5)(a), the legislature made a statewide policy decision that, in cities and counties over a certain size, it is desirable as a matter of urban planning to allow one ADU per single-family dwelling in areas within a UGB that are zoned for detached single-family dwellings, thus increasing the density of housing development in those areas. The considerations underlying the four Eugene Code standards at issue in this appeal—minimizing density and thereby limiting traffic, increasing livability, and preserving neighborhood character—are essentially policy arguments *against* ADU development in existing residential neighborhoods. The city’s proposed construction of ORS 197.312(5)(a) would effectively disregard the legislature’s own statewide policy determination in the guise of “siting” regulations.

On that point, the city argues that the “reasonableness” limitation in ORS 197.312(5)(a) would ensure that the city did not abuse its discretion in deciding where to allow ADUs within areas zoned for single-family dwellings—and that LUBA’s construction of “siting” “fail[s] to give any meaning at all to the term ‘reasonable.’” We disagree on both points. It is primarily the one-to-one allowance ratio, not the “reasonableness” limitation, that prevents cities and counties from circumventing the legislative intent. As for LUBA’s construction of “siting” purportedly depriving the word “reasonable” of any effect, the city seems to assume that all local regulations regarding where ADUs are placed on individual lots are necessarily reasonable, such that there would be no point in imposing a “reasonableness” limitation if that is what “siting” means. But that is a false premise. Local regulations related to where ADUs may be placed on individual lots may be reasonable or unreasonable, and only reasonable ones are allowed under ORS 197.312(5)(a). The reasonableness limitation has full effect under LUBA’s interpretation of “siting.”

We are similarly unpersuaded by the city’s argument that LUBA’s construction of “siting” fails to give any effect to the contextual words “relating to.” The thrust of

the city’s argument is that “relating to” means “directly or indirectly relating to,” not only “directly relating to.” Even if LUBA had interpreted “relating to” as meaning “directly relating to,” rather than “directly or indirectly relating to,” that would not deprive the phrase “relating to” of any effect—it would deprive it only of the city’s preferred effect. In reality, however, we do not understand LUBA to have expressed any view on how directly a regulation must relate to siting, or how indirectly it may relate to siting, to be permissible under ORS 197.312(5)(a). Instead, we understand LUBA to have focused—appropriately—on whether the four regulations relate to siting *at all*, as determined by what the legislature intended “siting” to mean.

Finally, the city argues briefly that a 2019 amendment codified at ORS 197.312(5)(b)(B)—which expressly excludes owner-occupancy requirements and new off-street-parking requirements from the definition of “[r]easonable local regulations relating to siting and design”—supports the city’s interpretation of “siting,” because it necessarily recognizes owner-occupancy and off-street-parking requirements as “siting” regulations. We generally do not consider later-enacted amendments in construing statutory language. *See DeFazio v. WPPSS*, 296 Or 550, 561, 679 P2d 1316 (1984) (“The views legislators have of existing law may shed light on a new enactment, but it is of no weight in interpreting a law enacted by their predecessors.”). In any event, although the city assumes that the 2019 legislature viewed those specific types of regulations as relating to siting but unreasonable, it is as likely that it viewed them as not relating to siting or design at all and simply wanted to act quickly to stop their being used to prevent ADU development. In this very case, in its first zone-verification decision, the city cited its owner-occupancy requirement as an additional reason that Kamps-Hughes could not build an ADU on his property.

In sum, based on the text, context, and legislative purpose of ORS 197.312(5)(a), we agree with LUBA that reasonable local regulations “relating to siting” means reasonable local regulations relating to where ADUs are sited on a lot, not where they are sited within areas zoned for detached single-family dwellings.

The only remaining question, then, is whether LUBA correctly applied the statute, so construed, to Eugene's regulations prohibiting new ADUs on lots accessed only by an alleyway (EC 9.2741(2) and 9.2751(18)(a)(2)), imposing a minimum lot-size requirement of 7,500 square feet (EC 9.2751(17)(c)(1)), imposing a minimum lot-dimension requirement of 45 feet by 45 feet (EC 9.2751(17)(c)(2)),⁸ and imposing occupancy limits for an ADU (EC 9.2751(17)(c)(7)). The city effectively concedes that, if LUBA's interpretation of "siting" is correct, then none of those regulations relate to "siting," and we agree. As to the minimum lot-size requirement, minimum lot-dimension requirement, and occupancy limits, we readily conclude that those are not regulations relating to siting. The alley-access prohibition is a closer question, but we ultimately conclude that it too is not a regulation relating to siting.

Accordingly, LUBA did not err in its construction and application of ORS 197.312(5)(a) to the four ADU development standards at issue.

Affirmed.

⁸ Kamps-Hughes's property appears to meet the minimum lot-dimension requirement in EC 9.2751(17)(c)(2), but no one has suggested that that affects our ability to address it.

From: [Kelly O'Neill Jr.](#)
To: [Housing DLCD](#); [Howard, Gordon](#); [Donnelly, Jennifer](#)
Cc: [Emily Meharg](#); [Shelley Denison](#)
Subject: Flexibility for local government - rule making comment
Date: Wednesday, July 1, 2020 2:01:52 PM

DLCD staff - Mr. Gordon Howard stated in a recent OPN post that DLCD is seeking input on HB 2001 rule writing.

I thank you for the opportunity to comment. I generally like flexibility in state laws and local municipal codes. With that being said, I cannot support additional flexibility which will lead to removal of beyond middle housing (i.e. triplexes, fourplexes, etc.) within certain areas within a given city. Please do not create a methodology to allow additional exclusionary zoning within a city. By allowing flexibility for certain areas in certain cities to not exceed density greater than a duplex we run the risk of perpetuating housing segregation.

This is well explained by Mr. Richard Rothstein in *The Color of Law: A Forgotten History of How Our Government Segregated America*. Mr Rothstein is a Distinguished Fellow at the Economic Policy Institute and a Senior Fellow at the Thurmond Marshall Institute.

Please let me know if you want to discuss this in greater detail or would like me to forward my comment to someone else within DLCD.

Have a great week and thanks for everything you do at DLCD. -Kelly

--

Kelly O'Neill Jr.
Development Services Director

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Development Services Department
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From: [Michael Andersen](#)
To: [Stuckmayer, Ethan](#); [Edging, Sean](#)
Subject: Re: joint letter on parking & lot size in LMCMC
Date: Friday, July 3, 2020 12:54:46 PM

A thought I had while sending this: the second sentence in that first recommendation was intended purely to calm the discomfort of folks who are afraid of parking maximums, but ... actually I think there's a pretty good case that regulatory parking maximums would also be an unreasonable burden to the creation of middle housing!

I wonder if you might actually be able to calm some of those fears yourselves by *including a ban on parking maximums* for smallplexes in the "minimum compliance" standard.

Michael

Michael Andersen | senior researcher, housing and transportation | Based in Portland | him or them
Sightline Institute | www.sightline.org | Find us on [Facebook](#) and [Twitter](#)
M 503.333.7824 | Zoom: 702.268.5970 | [@andersem](#)

From: Michael Andersen
Sent: Friday, July 3, 2020 12:44 PM
To: Stuckmayer, Ethan <ethan.stuckmayer@state.or.us>; Edging, Sean <sean.edging@state.or.us>
Subject: joint letter on parking & lot size in LMCMC

Hi, guys -

Based on some feedback from Sean, some of us put together the attached letter about a slightly tweaked approach to parking in the large-cities minimum compliance standard. To summarize:

Proposal 1. For lots of 6,000 square feet or less, or those with less than 60 feet of street frontage, cities should not be allowed to require more than two off-street parking spaces per triplex or fourplex. However, developers should be allowed to make site-specific decisions to build more spaces if they conclude future residents will demand it.

Proposal 2. For lots of any size where new homes can be added without demolishing existing structures -- either through addition or internal conversion -- the added homes should trigger no additional parking requirement.

Here are the folks who were able to sign on as of last night:

Kaarin Knudson, AIA, Better Housing Together (TAC member)
Mary Kyle McCurdy, 1000 Friends of Oregon (RAC & TAC member)
Tim Morris, Springfield Eugene Tenant Association (RAC Member)
Ted Reid, Metro Planning and Development (RAC & TAC member)
Kol Peterson (TAC member)
Ed Sullivan (RAC member)
Michael Andersen, Sightline Institute
Daniel Bachhuber, Tualatin planning commissioner
Andrew Brand, president, Evergreen Housing Development Group
Neil Heller, Neighborhood Workshop
Kathryn Olney and David Welton, Bend YIMBY
Eli Spevak, Orange Splot
Sara Wright, Oregon Environmental Council

Michael

—

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To: Ethan Stuckmayer
Oregon Department of Land Conservation and Development
July 2, 2020

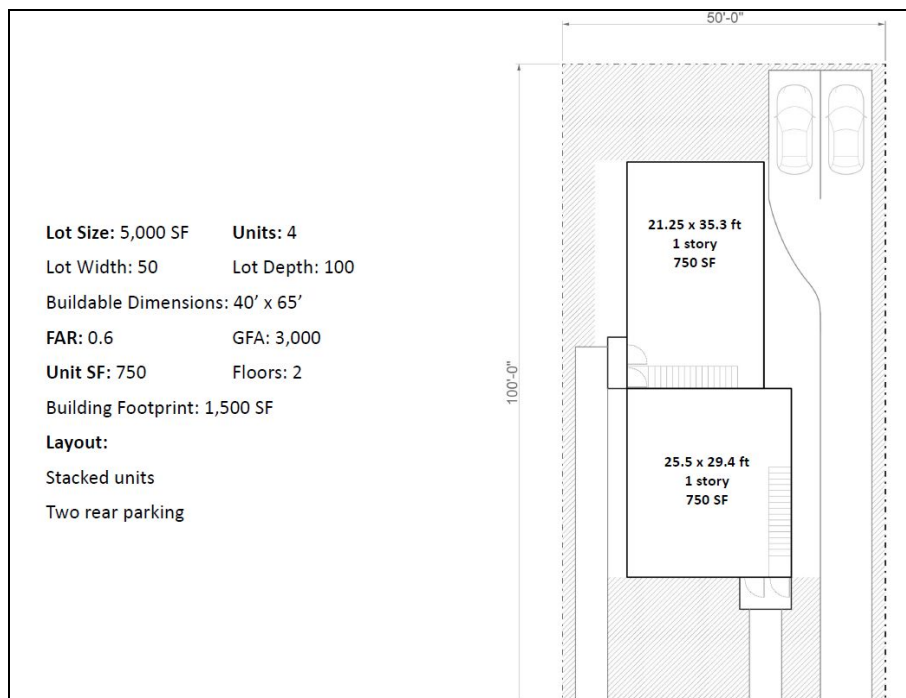
Re: HB 2001 LMCMC off-street parking requirements

We endorse **parking standards tiered by lot size** in the minimum compliance standard of Oregon's middle housing rules for large and metro cities. We also endorse, across all lot sizes in both the minimum compliance standard and model code, **no additional off-street parking requirement when an existing dwelling is preserved** during the addition of middle housing.

Proposal 1. For lots of 6,000 square feet or less, or those with less than 60 feet of street frontage, cities should not be allowed to require more than two off-street parking spaces per triplex or fourplex. However, developers should be allowed to make site-specific decisions to build more spaces if they conclude future residents will demand it.

Rationale. Small residential lot geometry, as modeled in the newly circulated site plans from SERA, makes it obvious: on smaller lots, triplexes and fourplexes will not be possible in much of Oregon's large and metro cities if jurisdictions are allowed to require three or more off-street parking spaces. Furthermore, some future residents may not need those spaces.

If it were to allow jurisdictions to require three or more off street parking spaces on small lots, the state would be enabling the effective exclusion of these middle housing types from "hot markets," where this housing type is likely to be in the highest demand.



The related ECONorthwest economic analysis, which focused mostly on testing the feasibility designs with up to two parking spaces total, echoes this:

If more parking spaces were required than we tested (e.g., 1 space per unit), this would have more impacts on the possible building footprint and could trigger regulations that require more circulation area (e.g., requiring a turnaround area so that cars do not back out of the driveway). On small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint.

This is not to deny that adequate auto parking is a very important amenity. In fact, that's exactly why excessive mandates are unnecessary and therefore unreasonable. In many Oregon neighborhoods, it's economically impossible to build a home without at least one on-site parking space per unit. In many places, this will simply mean that fourplexes will not be built, legal or no.

However, in locations where Oregonians *can* find ways to live without a car, citywide laws should not require them to pay for space they don't need -- especially if the result is fewer and more expensive homes. For cities to require unnecessary parking space would put an "unreasonable cost" on the creation of middle housing, resulting in long-term burdens and exclusions that will fall heaviest on households that do not own cars. Therefore, this would violate HB 2001, Sec. 2(5). Federal data show that in cities like Redmond, Woodburn, Bend and Springfield, these households generally fall in the poorest 10 to 15 percent of the population. We should not further entrench neighborhood-level segregation in Oregon over the century to come for the sake of parking requirements.

In the shorter term, triplexes and fourplexes that require fewer driveways will also tend to be more physically attractive, and will destroy less public curbside space, than buildings with many driveways. Here are two examples of modern fourplexes, one with two off-street spaces and one with four:





Proposal 2. For lots of any size where new homes can be added without demolishing existing structures -- either through addition or internal conversion -- the added homes should trigger no additional parking requirement.

Rationale. As DLCD's advisory committees have previously discussed, Oregon has an interest in retaining existing structures. This is part of a climate strategy, among other things. Many Oregon lots with existing structures have room to add two or three homes, but the existing building or road access is situated in such a way that it would be difficult to add two or three additional parking spaces unless the older building were demolished.

Therefore, when existing structures can be retained on lots of any size, creating additional housing should take priority over creating additional parking. In this situation, the newly created homes should not trigger additional parking requirements, regardless of lot size. If a landowner can find a feasible way to add homes to their property without demolition, additional off-street parking requirements necessarily become an unreasonable cost for creating middle housing.

Kaarin Knudson, AIA, Better Housing Together (TAC member)
Mary Kyle McCurdy, 1000 Friends of Oregon (RAC & TAC member)
Tim Morris, Springfield Eugene Tenant Association (RAC Member)
Ted Reid, Metro Planning and Development (RAC & TAC member)
Kol Peterson (TAC member)
Ed Sullivan (RAC member)
Michael Andersen, Sightline Institute
Daniel Bachhuber, Tualatin planning commissioner
Andrew Brand, president, Evergreen Housing Development Group
Neil Heller, Neighborhood Workshop
Kathryn Olney and David Welton, Bend YIMBY
Eli Spevak, Orange Splot
Sara Wright, Oregon Environmental Council

July 3, 2020

To: Ethan Stuckmayer and MCTAC members

Re: HB2001 Cottage Cluster code

Thank you for the opportunity to review the first round of implementation work on the Cottage Cluster portion of HB2001. My hope is that a few suggestions contained herein will make this re-emerging housing type work for a wider range of for-profit and non-profit builders who serve first time homebuyers.

As currently proposed, unfortunately, the cottage cluster code wouldn't support fee simple ownership models. This is a major obstacle, since builders, buyers and lenders all prefer fee simple ownership.

It also wouldn't work well for rentals, because state statute requires that they be detached. I recognize that HB2001's language ties your hands on this. Small clusters of detached homes are more expensive than other forms of rental housing on a per-square-foot basis to build, maintain, and heat/cool due to their high skin-to-volume ratio. For these reasons, a developer interested in building rental housing is much more likely to opt for attached and/or larger multifamily models that are more efficient to build and manage. Although some small detached rental clusters do exist in Oregon (including the Catterlin Cottages in Salem and some nearby), they're typically WWII vintage and quite rare. Meanwhile, on properties with low density multi-family zoning that would allow detached or attached housing, builders of rental housing consistently build attached housing products – which wouldn't be allowed under the cottage cluster code.

Back to ownership... It's true that some builders have reluctantly started overlaying condominium ownership on cottage cluster layouts in order to sell homes to individual buyers. But this only happens in expensive markets (like Portland) and is often just an end-run around unwieldy and time-consuming subdivision processes. Builders would rather have separate lots to sell, and buyers and lenders prefer this too. Unlike many other states, Oregon never got around to adopting cooperative housing statute into ORS – so mortgage financing for housing coop shares isn't available in Oregon (it is, in WA). I think it's unlikely that for-sale cottage cluster projects will get much traction if co-ops don't work in OR (which they don't) and condominium are the only way to sell them.

There are good reasons why most cottage clusters or “pocket neighborhoods” developed elsewhere in the US are legally subdivisions, with lots owned fee simple by residents. To adopt a cottage code that bars this option would be short-sighted and of limited practical use. Fortunately, I think it's possible to allow for this option without getting mixed up with the intricacies of local subdivision codes.

Specific suggestions for how to do this are included on the following page, along with additional ideas for how to implement this portion of HB2001. I haven't tried to categorize these suggestions into 'model code', 'minimum compliance' or 'best practice recommendation' at this stage, but will be happy to provide thoughts on this as the cottage cluster portion of HB2001 gets further refined.

Please don't give up on the notion of allowing small homes on their own small lots. In fact, this is *exactly* the kind of housing we should be supporting to meet the demands of moderate-income homebuyers who have been largely shut out from the current new home market.

Thank you for your consideration,

Eli Spevak, Orange Splot LLC

Cottage Clusters

- Cap cottage footprint at 900sf, total living space at 1,200sf

Commentary: HB2001 provides no flexibility on the 900sf footprint cap. A 1,200sf home is larger than an ADU and can reasonably accommodate 3BRs

- Allow subdivision cottage clusters in any residential zone where this housing type is allowed.
 - In zones with lots where standard minimum lot are 5,000 square feet or less, there are no minimum sizes for cottage cluster lots.
 - In zones where standard minimum lots are greater than 5,000 square feet, lots newly created for cottage cluster homes must meet lot dimensional standards of the jurisdiction's smallest allowable lot type.

Commentary: This draws from the way corner duplex lots are provided for in Portland's zoning code – which conveniently doesn't require any changes to the subdivision code. Such a provision would allow small cluster homes to be built on separate lots. Builders would still have to navigate the local partition or subdivision process, as they would for any subdivision. But they wouldn't have to use condominium ownership to sell cottages separately.

- Match model code and minimum code requirements for parking to what applies for 3 or 4 plexes. Allow clustered parking.
- Exempt one pre-existing home (built before ___) per cottage cluster from size, height and perimeter setbacks.

Commentary: It's fairly common to find large homes on large lots. Cottage cluster development should be encouraged in such situations - without requiring it to be partitioned off. If an existing home is too tall, too many square feet, or a non-conforming distance to a property line, this should not disqualify the property on which it sits from being used for cottage cluster development, so long as the home gets preserved.

- Max. height: 25'

Commentary: Traditionally, cottages fall in scale somewhere between ADUs and single family homes. Capping height at 25' is mid-way between, effectively limiting cottages to 2 stories. This is the height limit found in Sisters', Bend's, and Langley's cottage cluster codes.

- Base code provisions apply for setbacks and landscape buffers around the perimeter of the site (although not necessarily for internal property lines, if subdivision clusters are allowed). If FAR is used locally, this would also apply to the cottage cluster as a whole.

Commentary: This ensures that from a neighboring property owner's perspective, a cottage cluster is no more intensive or proximate a use as would otherwise be allowed on the property. And it would probably have a reduced height limit.

- Max. homes per cluster: 16

Commentary: Some cottage cluster codes cap the number of homes in a cluster (e.g. 12 in White Salmon; 14 in Sisters, OR) and some don't cap the number at all (e.g. Bend).

- At least 50% of homes must face onto common landscaped open space (which could be a common green or within a shared court) that includes at least 400 square feet of grassy area, play area, or dedicated gardening space, which must be at least 15 feet wide at its narrowest dimension.

Commentary: This provision should only apply to subdivision cottage clusters if it's actually possible to achieve such a layout through a land division (e.g. through a 'common green' or 'common court' code – or ability to create commonly owned tracts). If it's not possible, this provision shouldn't apply.

- Accessory dwelling units shall not be permitted in cottage cluster developments

Commentary: A cottage cluster code is an alternative way of building more, smaller homes on a property. Adding ADUs would effectively 'double dip' on two types of density bonus. Bend's cottage cluster code has an ADU prohibition, presumably based on this same logic. Portland's current corner duplex provision similarly disallows ADUs.

- Allow – but do not require - a “common house” detached, covered, accessory structure in a cottage cluster containing shared kitchen facilities and/or guest bedroom(s), so long as it falls within height, setback, FAR (if used), and building coverage limits for the site. Such a building would not count towards the maximum allowed density so long as a covenant is recorded against the property stating that the structure is not a legal dwelling unit and will not be used as a primary dwelling.

Commentary: In some jurisdictions, a 'common house' with kitchen and sleeping facilities is treated as a dwelling unit. This means the builder pays SDCs or impact fees for the structure and it counts against maximum allowed density for the site. These costs significantly decrease the likelihood that such shared amenities ever get built. An alternative approach is to treat such a structure as a commercial structure. But this has its own complications & added expenses – since building code would treat it as a mixed occupancy structure and hence trigger full NFPA-13 sprinkling and associated 2" water service with accompanying quarterly fees in perpetuity. Covenanting the property could be a way to allow common houses without burdening them with these additional costs/regulations.

- Key final point!! Don't layer on additional restrictions often associated with cottage cluster codes that rarely, if ever, get used (e.g. min. covered porch areas, design restrictions, fences, ...)

Commentary: Many cottage cluster codes have rarely, if ever, been used. Although things might have changed, as of a couple years ago I'm pretty sure that every cottage cluster code in Oregon had been used exactly once or never at all. This is reminiscent of ADU codes from around the country with low utilization rates. Over-regulation may be a driving cause in both instances. In cities where regulations have been trimmed back on ADUs, numbers have typically increased. Given the public policy benefits of cottage cluster housing, it makes sense to reduce regulations so they are more likely to get developed as an alternate to traditional single family homes (which would be larger and more expensive). Any design restrictions (e.g. historic design, community design standards, street window glazing requirements...) that would apply to single family homes would also apply to cottage cluster homes. But additional design requirements specific to cottage cluster homes should be avoided.

From: Mary Kyle McCurdy [mailto:mkm@friends.org]
Sent: Friday, July 3, 2020 3:25 PM
To: Stuckmayer, Ethan <estuckmayer@dlcd.state.or.us>; Hallova, Anyeley <ahallova@dlcd.state.or.us>; zdilj@comcast.net
Cc: Taylor, Casaria <ctaylor@dlcd.state.or.us>; Mary Kyle McCurdy <mkm@friends.org>
Subject: Comments on methodology for "in areas"

Hi all-

At the HB 2001 TAC #7 meeting, there was extensive discussion about the methodology that should be used to apply the "in areas" language of HB 2001 to determine the geography on which the middle housing types beyond duplexes would be required to be allowed. The operative language from HB 2001 is:

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

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

After thinking back over the TAC and RAC discussions and reviewing the staff memo on this, other letters submitted, and the statute, we believe the "whittle away" approach is consistent with HB 201, and the "balloon" approach is not, as explained in the attached.

Thank you for your considerations of this.

Mary Kyle

Mary Kyle McCurdy

Deputy Director

1000 Friends of Oregon





July 3, 2020

To: Ethan Stuckmayer, Senior Planner of Housing Programs
HB 2001 RAC Co-Chairs, Commissioner Anyeley Hallova and Jerry Lidz

From: Mary Kyle McCurdy, Deputy Director, 1000 Friends of Oregon and RAC member

Re: HB 2001 Model Code for Metro & Large Cities – Defining “in areas”

At the June 25, 2020 meeting of the Technical Advisory Committee for HB 2001 regarding the Model Code for Metro & Large Cities, there was an extensive discussion about how to apply the bill’s use of the term “in areas” to determine where, and to what extent, the legislation contemplates that three- and four-plexes, townhomes, and cluster cottages should be located. HB 2001, Sec. 2(2)(a). The DLCDC staff has described two methods for thinking about this determination – the “whittle down” and the “balloon” approaches.

Based on the language and intent of HB 2001, we believe that the “whittle down” approach should be used. We also believe that once the HB 2001 RAC and TAC actually start applying it, the results might ease some of the anxiety expressed at the June 25 meeting. In contrast, we believe starting with the “balloon” approach would not be consistent with HB 2001, and some of the arguments expressed for starting with it illustrate that inconsistency.

HB 2001 states that (emphasis added):

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

- (a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and
- (b) a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

Subsection 4 describes the “except” part:

- (4) This section does not apply to:
 - (a) Cities with a population of 1,000 or fewer;
 - (b) Lands not within an urban growth boundary;

- (c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;
- (d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or
- (e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

That is the extent of lands to which (2)(a) - the middle housing with units beyond duplexes and which was the subject of the meeting - need not apply and, except perhaps for (c), these are readily mappable. That is the starting point from which "areas" could be "whittled away" though the provision in subsection (5):¹

(5)... Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals."

Subsection (5) describes the *only* basis on which middle housing could be excluded from any piece of land, regardless of whether one follows the "whittle away" or "balloon" approach.

The description provide by DLCD of "balloon" and some categories of exclusion described by some TAC members are not consistent, in our opinion, with HB 2001 and also do not make practical sense. DLCD describes the "balloon" as follows:

"The 'balloon' approach is based on locational services, such as public transit, existing higher density areas and mixed residential and commercial use zones. This approach would encourage middle housing development in categorical areas that are already higher density and have transportation or other services.

"This 'balloon' approach will allow middle housing types in areas that are already higher density and will most likely have services available to promote reduced dependence on auto travel."

However, DLCD noted, correctly, the "balloon" method has at least two problems: it has "equity implications" and it violates HB 2001's "clear and certain intent to provide more housing choice in historically exclusive residential areas."

It also has at least one other clear and significant legal obstacle: the *only* basis on which any "area" or parts of an area may be excluded through regulation is if it is necessary to comply with a "protective measure adopted pursuant to the statewide land use planning goals." That does *not* encompass excluding areas that, for example, are not near transit, are already near higher density, are based on some sort of census block calculation or school boundaries, or any other characteristic beyond (5). Not only are these not spoken to at all in (5), but they are

¹ Please note that Section 2(6)(b) provides that cities and counties may choose to allow any or all middle housing types in any of these areas.

based entirely on a static look at today – where do buses run now, what are today’s school boundaries, etc.... That is inconsistent with the intent of HB 2001 – and Goal 10 – to provide housing opportunities for all, today and tomorrow.

HB 2001 has already made the equity determination: middle housing is going to be allowed in all single-family neighborhoods. We recommend that the RAC and TAC start determining, based on (5), how to determine what protective measures would cause which areas, subareas, lots, or other types of “areas” to require regulation for some or all of the other types of middle housing beyond duplexes.

From: [Ed Sullivan](#)
To: [Stuckmayer, Ethan](#); [Howard, Gordon](#); [Young, Kevin](#); [Edging, Sean](#)
Cc: [SRINIVASAN, Kate](#) * HCS; [Taylor Smiley Wolfe](#); [Mary Kyle McCurdy](#); [Andree Tremoulet](#); [Allan Lazo](#)
Subject: RAC Meeting July 14, 2020
Date: Friday, July 10, 2020 6:20:05 PM

I have been through the packet and suggest there are at least four legal issues for the RAC and staff to consider. Here they are, including my takes on them:

1. The Folly of Construction of an HPS Superstructure on the Sandy Ground of Existing HNAs -- While I join most of the participants in wishing the success of the RHNA, that success is not assured unless and until the legislature acts favorably. The HPS approach will remain, however, and is informed by the information supplied under HB 4006 and existing HNAs. The latter may be adopted years ago and may never have been submitted to DLCD through the PAPA process. For those that have been submitted, there have been few (maybe no) LUBA appeals, so that, by operation of law, they are considered acknowledged. I'm not sure that makes HNAs immune from further challenge on non-goal matters, but the fact remains that they must be good because no one challenged them. For those who read these documents regularly, their quality varies greatly. Some, especially those done by ECONorthwest with good city cooperation, are excellent. Others are pretty poor. DLCD bears much of the blame for the poor quality of HNAs, as it has generally turned a blind eye to inadequate products and, to my recollection, has never taken an HNA to LUBA.

But HNAs are significant building blocks for the HPS, which are then only as good as the information and direction they provide. I have advocated, and still advocate, for standards for HNAs so that the state may devise policy using apples to apples comparisons, rather than give those who don't update their HNAs or provide poor information or policies a means of avoiding their housing obligations, given there is no right of appeal of a local government HPS under HB 2003, sec. 4(5) or from a department determination of its adequacy under sec. 5(5) (c). Arguably, one must wait another 6 or 8 years before housing obligations take root. That is an unacceptable result.

If the HPS rules do not require standards for HNAs now, then it should require the information that should have gone into an HNA to be submitted as part of the HPS documentation and then move quickly into rulemaking to set standards for HNAs. We should not reward inadequate or shoddy work with the benefit of the doubt or the deferral of housing obligations until close to the year 2030.

2. Deficiencies in Meeting the Model Codes -- We all know the model code comes into operation if a city fails to adopt all of the required elements to allow duplexes or other middle housing. But what happens if a city fails with regard to one or a few elements of these requirements? Does the whole code come into place or does it apply just to those elements that have failed to be adopted locally? If the former, that action may change many other housing requirements in a way wholly unanticipated by anyone. If the latter, there is still the risk of conflict of the imposed element being inconsistent with the remainder of the housing regulations.

Moreover, there is the issue of how nonconformity with the housing legislation is determined. There is no acknowledgment process, so the defaults are periodic review (which is virtually absent from the Oregon land use system) or the PAPA process, which requires filing within 21 days. The risk of not filing is that the housing regulations are deemed acknowledged (which

may not mean the provisions are immune from challenges on non-goal grounds). DLCD's challenges to PAPAs are as frequent as a summer snowstorm in Bend and leaving housing obligations to nonprofits only allows for a few additional challenges. And when challenges are made (perhaps by a builder who contends the local code violates HB 2001), the result is likely to be a remand with a waste of time and money all around. And if the local code is invalidated altogether, the applicant is sent back to undertake a review process that may be different than the one she originally undertook.

3. The IBTER Remedy -- What happens if a recalcitrant city does not allow for additional housing required by HB 2001 and either doesn't seek an IBTER or fails in securing that relief and doesn't replan and rezone land as required by that legislation? As I read HB 2001, LCDC could enter an enforcement order (and either require the grant or denial of development permits) or the withholding of state shared revenues. That is a fairly blunt instrument that should be more discussed than used and counsels for further thought on what inducements or penalties ought to apply in such situations. I suggest staff develop an administrative policy that doesn't reward delay on top of delay in providing for housing needs by a failed IBTER.

4. Data on Race and Ethnicity -- I understand that there has been an effort to require such data to be used in the formulation of the HPS and applaud that effort. I also understand that staff is working with the PSU Population Center to provide disaggregated data on a regular basis and hope that the RAC will support inclusion of that data as a regular element of housing reports. While there is a correlation between race and ethnicity on the one hand and income on the other, racial and ethnic segregation is not fully captured by income data. If we are to make headway on segregation in housing, we must have adequate data on which to measure the extent of that segregation and the effectiveness of our policy responses to the same.

I hope staff and the RAC find these suggestions helpful.

Ethan Stuckmayer
Oregon Department of Land Conservation and Development
635 Capitol St NE # 150
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

