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TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
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SUBJECT: **Agenda Item 6, November 18-19, 2021, LCDC Meeting**

MIDDLE HOUSING MASTER PLANNED COMMUNITIES RULES DISCUSSION

I. AGENDA ITEM SUMMARY

Purpose. The purpose of this agenda item is to inform the Land Conservation and Development Commission (LCDC or commission) about concerns local governments have raised with the Master Planned Communities portion of the middle housing administrative rules found in OAR 660-046, and to seek commission direction on resolution of issues. Department of Land Conservation and Development (DLCD or department) staff will discuss the Master Planned Communities rules portion of Division 46 - OAR 660-046-0205 (Attachment A) - and whether the department should interpret the rules differently or if the commission should undergo rulemaking to modify them.

Objective. Department staff hopes to hear commission feedback or direction on how to proceed with correcting existing issues with Master Planned Communities portion of Division 46 – OAR 660-046-0205(2)(b). Staff identify four potential resolutions in this staff report.

For further information about this report, please contact Ethan Stuckmayer, Senior Housing Planner, at 503-302-0937 or ethan.stuckmayer@dlcd.oregon.gov.

II. BACKGROUND

On December 9, 2020, LCDC adopted the final set of rules implementing OAR Chapter 660, Division 46. The rules adopted by the commission require cities across the state to amend their existing development codes and comprehensive plans to allow for a range of middle housing types by specific deadlines. Non-Metro cities (“medium cities”) between 10,000 and 25,000 population must allow a duplex on all lots or parcels where single-family detached residences are currently allowed by city zoning before June 30, 2021.

Cities greater than 25,000 population and the affected Portland Metro Area jurisdictions (“large cities”) must, in addition to the duplex requirement noted above, allow triplexes, quadplexes, townhomes, and cottage clusters in areas zoned for single-family residential development before June 30, 2022.

Leading up to the final public hearing on these rules, one of the major topics of discussion at both the Rulemaking Advisory Committee, with commission and stakeholders was the structure and intention of OAR 660-046-0205(2)(b) relating to how cities and counties must allow middle housing in master planned communities. Master planned communities are undeveloped parcels within an urban growth boundary larger than 20 acres in size. The rule is structured to provide large cities greater certainty on the major implementation question of “how does a city adequately plan and construct infrastructure for new, large residential developments on unimproved lands within the Urban Growth Boundary?” The debate during rulemaking even engendered comment from the Speaker of the Oregon House of Representatives, who submitted a letter to the commission on the subject, among others. The Speaker’s letter and other public comment submitted related to master planned communities is [linked on the commission webpage](#).

Specifically, OAR 660-046-0205(2)(b) establishes a process for large cities to further regulate or limit middle housing development in master planned communities if the large city plans to provide infrastructure capacity to accommodate an overall minimum number of dwelling units per acre within the boundaries of the master planned community.¹

¹ OAR 660-046-0205(2)(b) provides:

(2) A Large City must allow for the development of Triplexes, Quadplexes, Townhouses, and Cottage Clusters, including those created through additions to or conversions of existing detached single-family dwellings, in areas zoned for residential use that allow for the development of detached single-family dwellings. A Large City may regulate or limit development of these types of Middle Housing on the following types of lands:

[...]

(b) Master Planned Communities: Large Cities may regulate or limit the development of Middle Housing in Master Planned Communities as follows:

(A) If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan after January 1, 2021, it must allow the development of all Middle Housing types as provided in OAR 660-046-0205 through OAR 660-046-0235. For Master Planned Communities adopted after January 1, 2021:

(i) A Large City must plan to provide urban water, sanitary sewer, stormwater, and transportation systems that accommodate at least 20 dwelling units per net acre if located within a metropolitan service district boundary, and 15 dwelling units per net acre if located outside of a metropolitan service district boundary.

(ii) The Large City may require the applicant demonstrate, through an amended public facility plan or similar mechanism, the sufficient provision of public services needed to serve the proposed development, if a proposed Middle Housing development exceeds the planned public service capacity of a Master Plan.

(iii) A Large City may require a mix of two or more Middle Housing types within a Master Plan or portions of a Master Plan.

Due to the amount of discord on the subject, the commission directed staff to report back to the commission within one year to assess how the implementation of the master planned community rules had progressed and to propose any needed corrections to improve implementation.

III. AN IMPERFECT RULE

The master planned community rule, OAR 660-046-0205(2)(b), is a provision that provides large cities parameters on middle housing development in “greenfield” areas, areas that are undeveloped or have minimal existing levels of development on large parcels. The rule encompasses two types of greenfield scenarios: one in which the master plan was adopted prior to the administrative rule and one in which the master plan was adopted after adoption of the rule. The latter is the focus of most of the concern.

For reasons discussed below, department staff consider this rule to be an imperfect measure to address the issue of infrastructure planning in greenfield contexts.

Expected Unit Density Without Differentiation Among Dwelling Unit Types is a Poor Infrastructure Capacity Planning Tool

This rule belies a complex issue that was not comprehensively addressed in rulemaking – how cities plan for infrastructure to serve residential development. Often throughout the rulemaking process, local governments questioned the overall infrastructure impacts of a quadplex compared to a single family detached home. A common question was asked: *If property owners can now build four units where they formally were only able to build one, do cities need to plan for four times the infrastructure capacity. Is aggregated impact of the four units in a quadplex four times greater than a single family detached home?* The answer to these questions is likely that the infrastructure impact of a quadplex is less than four times the infrastructure impact of a single family detached home; however, the exact amount is unknown. This uncertainty creates major implementation issues for local governments as they prepare to plan for, review, and eventually approve large-scale middle housing developments on formerly undeveloped lands.

To provide a reasonable expectation for local governments on how to adequately plan infrastructure in these greenfield areas, OAR 660-046-0205 specifies the amount of planned infrastructure capacity a Large City could anticipate in a Master Planned Community - fifteen (15) dwelling units per acre (du/ac) for cities outside of the Metro

(iv) A Large City may designate areas within the master plan exclusively for other housing types, such as multi-family residential structures of five dwelling units or more or manufactured home parks.

urban growth boundary (UGB) and twenty (20) du/ac for cities within the Metro UGB. The rule – out of practical necessity to align with common infrastructure planning methodologies – is predicated on per-unit infrastructure impact assumptions. This approach fails to recognize how variations in the characteristics of a unit impact its effect on the overall infrastructure system.

Blanket Per-Unit Infrastructure Demand Assumptions Frustrate Affordable, Fair, and Equitable Housing Outcomes

Middle housing has a lesser per-unit impact on infrastructure systems in comparison to single-family detached dwellings, yet many infrastructure planning and finance methodologies assume identical per-unit impacts (i.e., four units in a quadplex equals four times the infrastructure capacity needed), regardless of the characteristics of the unit or local context of development. This approach significantly affects the actual infrastructure impact of a particular development.

This dynamic ends up biasing infrastructure demand estimates against smaller and higher-density developments, precludes housing development where the demand is greatest, and decreases the affordability of housing generally. A report published by the Department of Housing and Urban Development noted the negative impacts of infrastructure planning methodologies on housing affordability and equitable outcomes in the context of impact fees:

“Flat rate impact fees compromise affordability and are socially negative to the degree they systematically overcharge purchasers in smaller, less expensive houses or apartments and undercharge others in the most valuable houses.”²

These dynamics extend beyond impact fees. For example, emerging research in California suggests that methodologies that estimate transportation impact (e.g. “level of service”) bias against smaller and higher-density developments and increases auto dependency.³ Additionally, these methodologies inaccurately assess the actual impact of development, especially as they vary by income.⁴ These dynamics create significant obstacles for the development of subsidized affordable housing and systematically overcharge those with the least ability to pay.

Impractical Implementation for Local Governments

² Bowles, L., & Nelson, A. C. (2008). Impact Fees and Housing Affordability: A Guide for Practitioners. US Department of Housing and Urban Development, Office of Policy Development and Research. Pg. 43.

³ Ding, H., & Taylor, B. D. (2021). How does traffic, or the fear of it, affect housing affordability? Examining the effect of Traffic Impact Analysis on Housing Production and Affordability. UCLA: Institute of Transportation Studies. Retrieved from <https://escholarship.org/uc/item/6h47h1ts>

⁴ Howell, A., Currans, K. M., Gehrke, S., Norton, G., & Clifton, K. J. (2018). Transportation impacts of affordable housing. *Journal of Transport and Land Use*, 11(1), 103-118.

Department staff have had discussions with several local governments and planner groups about the concerns they have surrounding implementation of these rules. These groups raise several additional concerns beyond those outlined above, including unclear guidance on the difference between planned density and expected density, how the city should handle phased master planned community developments, and how to structure system development charges to capture growing infrastructure demands over time.

Department staff have invited the planning staff from some of the more involved local governments to provide public testimony to the commission during the agenda item presentation. Staff are pleased that staff from the cities of Beaverton, Hillsboro, Sherwood, and Wilsonville will be able to attend.

IV. ONGOING CORRECTIVE EFFORTS

To date, department guidance on this issue has generally been to recommend that cities comprehensively re-analyze their infrastructure planning methodologies for new urban development on currently vacant lands based upon the most recent research and methodologies produced by academic and professional experts. However, department staff recognize that it would be overly burdensome to require cities to do this in addition to the code changes required by House Bill 2001. Infrastructure planning has continued to be a critical area of focus for the DLCD Housing Team, with the goal of improving infrastructure planning in a manner that supports housing choice and diversity. Currently, the Housing Team is supporting Oregon Housing and Community Services in developing a study on system development charges as directed by HB 3040 passed in the 2021 session. The purpose of this study is to analyze the impact of system development charge methodologies on housing development and affordability. We anticipate that this study will lead to future policy discussion on infrastructure planning.

In the coming months, members of the Housing Team will be exploring case studies in partnership with cities and service providers to assess the impact of OAR 660-046-0205(2)(b) rule on housing affordability. Our goal is to explore alternatives that provide cities greater certainty on expected development in Master Planned Communities while ensuring middle housing, and housing choice generally, will be more accurately planned for and developed in these areas.

Additionally, after receiving guidance from commission on the potential resolutions outlined in more detail below, department staff will engage local government partners and housing advocates to ensure a resolution achieves the goals and intended purpose of HB 2001.

Potential Resolutions to Master Planned Community Rule Issue

After concluding preliminary research into the issue and having conversations with local government planners, department staff has narrowed the potential future actions to

remedy issues with OAR 660-046-0205(2)(b) down to four. These options range in both their levels of complexity and commission involvement.

1. *Proceed with OAR 660-046-0205(2)(b) as written.*

This option would also require dedicated staff time and resources to provide formal guidance on how to implement the provision in the manner drafted in rule. This would include written rule interpretations, case study examples, and possibly technical assistance.

2. *Reduce the Dwelling Units Per Acre Infrastructure Planning Requirement.*

Staff would bring amended OAR language that would functionally maintain the already established process of using density as a proxy for infrastructure capacity plan intact but would reduce the minimum planned infrastructure capacity requirement from 15 du/ac outside Metro and 20 du/ac inside Metro. This option would require department staff to review case study examples and conduct development feasibility analysis to determine which du/ac metric is most practical. Staff would likely still need to dedicate staff time and resources to provide formal guidance as described in Option 1 above.

3. *Establish a minimum middle housing expectation threshold in new Master Planned Communities.*

This option would amend the underlying basis of OAR 660-046-0205(2)(b) as it is currently written. Whereas the current rules require cities to plan for a certain number of dwelling units per acre, this option would amend the rules to set minimum middle housing thresholds in new Master Planned Communities. This option can be viewed similar to the “Performance Metric” option of allowing middle housing available to Large Cities. For example, the rules under this option might establish that a minimum of XX% of units in a Master Planned Communities be triplexes, a minimum of XX% be quadplexes, XX% be cottage clusters, and XX% be townhouses. This option would need to be carefully constructed as to not conflict with the clear intent of HB 2001 that cities *allow* middle housing, not *require* middle housing.

4. *Define middle housing-type infrastructure impact safe harbors.*

Similar to Option 3 above, this option would amend the underlying basis of OAR 660-046-0205(2)(b). This option would require the rules to establish reasonable expectations for the increased infrastructure demand that may result from each middle housing type. The result would be a series of unique middle housing-type “multipliers” that can provide local governments with informed estimates of true infrastructure demand of each middle housing type. For example, the rule would create a safe harbor multiplier that would allow the local government to assume that a quadplex has an infrastructure demand of 3.25 times that of single family detached home. This would assist the local government

in determining the correct amount of infrastructure capacity to build and finance in any Master Planned Community. The exact multipliers are not yet known and would require extensive research and study.

V. CONCLUSION

Department staff appreciates any feedback, suggestions, direction, or recommendations how to proceed in remedying these complex infrastructure capacity and housing planning issues.

VI. ATTACHMENTS

A. OAR 660-046-0205