

Residential Infill Project - Part 2

December 13, 2021

Dear Members of the Portland Planning and Sustainability Commission:

First and foremost, Bureau of Planning & Sustainability staff, City Council, the Commission, community advocates, and everyone who has worked on RIP1 and/or RIP2 should be proud. Together, Portland has exhibited extraordinary leadership, changing how we think about neighborhood zoning, expanding housing options, prioritizing development bonuses for regulated affordable homes, and, ultimately, centering anti-displacement in the zoning conversation. Since RIP1 passage, many cities and multiple states - not just Oregon - have introduced legislation legalizing more “missing” middle housing types.

As members of the Build Small Coalition, a group of public, private and nonprofit small home and housing affordability advocates who work together to encourage development of and equitable access to small housing types throughout the greater Portland region, we support the stated goals and direction for RIP2, namely prioritizing compliance with HB 2001 and SB458 by the state’s deadline, and achieving parity in R10-R20 with codes for R2.5-R7. While we appreciate the more limited scope of RIP2, **we encourage additional changes as detailed below to better deliver on the promises of RIP1 and address our ongoing, acute housing shortage.** While some benefits of RIP reforms may not be realized for years to come, some can be much more immediate if we let them. RIP2 must continue to ensure that we are doing everything in our power to both avoid a future shortage and to deliver housing options that can meet the needs of a wider range of Portlanders, now.

To that end, **the recommendations below are focused on the viability of all recently-legalized middle housing options - in all neighborhoods.** Further, if we are serious about providing as many below-market homes as possible, especially to first-time homebuyers, we must improve rules and incentives specifically for deeper affordability. We urge the Commission to work with staff, and to incorporate the following changes into the Recommended Draft of the Residential Infill Project - Part 2 as it comes before City Council:

A. Code tweaks for viable 4-plexes:

Some builders have begun to have minor success with 4-plexes that opt in to deeper affordability, delivering one or more homes at 60% MFI or less. However, without a parallel increase in FAR for 4-plexes (as exists for duplexes and triplexes), it is unlikely that Portland will see many 4-plexes built other than studios. Small changes in RIP1 FARs will help improve viability of 4-plexes, including private-public partnerships for mixed-income:

- A(1): If we want to deliver more family-sized homes, **FAR for 4-plexes should increase just as all other -plex options, to 0.7 to 1.** While FAR is graduated, increasing by 0.1 per number of homes for duplexes and triplexes, 4-plexes receive no additional space above that offered to triplexes. Marginally expanding FAR for 4-plexes, especially on 3,000 to 5,000 sf lots, is further supported by the July 24, 2020 memo to DLCD by ECONorthwest testing triplex/4-plex feasibility for the Middle Housing Model Code project.

- **This should NOT disrupt the current affordability bonus**, which should allow 0.8 to 1 FAR if one or more homes is regulated below-market affordable. Continue to give competitive advantage to 3+ bedroom affordable homes.
- A(2): Allow a detached triplex to be built behind an existing house, instead of requiring new units to be attached to the existing building. For many developers the land basis for close-in infill lots is too high to buy existing homes and replace them with a 4-plex. Allowing detached triplex would create a viable path forward for developers to leverage the value of existing homes and open up an additional path to utilize RIP1 to construct more affordable infill 4-plexes on a standard 5,000 sf lot.

B. “Z” Overlay

- B(1): At a minimum, **remove the wildfire hazard mapping from the “Z” overlay, and allow fire safety to be continued to be governed by the permit processes, by building codes, by fire codes, and by the Fire Marshal.** Avoid mis-applying a zoning approach to the question of fire hazard safety and preemptively banning middle housing options.
- B(2): In the alternative: Wait to apply wildfire hazard mitigation measures until the state has completed its wildfire mapping process and staff has better information, which is scheduled to happen in 2022. At that point, city staff can assess whether it is actually necessary to create a zoning tool to address wildfire risk within the city, or not.

Policy Rationale

The RIP2 Proposed Draft “Z” overlay as mapped would remove middle housing options from over 24,332 lots citywide. **The overlay as currently applied will prevent middle housing options from being built in 96% of lots in R20 and 77% of lots in R10.** While “wildfire risk” isn’t responsible for all of this change, it is significant.

Along with R10-20 mapping, the net effect of the new “Z” overlay is to remove most middle housing options from the majority of lots in the West hills. **Given our acute need for more housing, there is no good reason to pre-emptively ban smaller, attached, and less-expensive options from whole areas** when fire risks are managed already through other, more appropriate regulatory tools such as building and fire codes, Title 24 and the Fire Marshal. Even if natural hazards *will* functionally prohibit some housing types on many lots, this is all the more reason to make sure that Portland allows less-expensive and regulated-affordable options on those larger R10 and R20 lots where they *do* work.

Removing middle housing options by applying a “fire hazard” criteria is a **significant departure from the approach taken so far in RIP1.** Functionally, the “Z” overlay will mean that triplexes, four-plexes, cottage clusters and townhomes (not to mention regulated affordable 6-plexes) will be banned across areas in Portland with low displacement risk, high homeownership rates, high home prices, and less income- and racial diversity compared with the rest of the city. Block-level (or, perhaps, “hill-level”) economic diversification needs precisely this kind of approach. Portland has stated time and again, publicly, how proud we are of RIP1’s potential to begin to reverse decades of segregation through critical examination of historical and current barriers. Please continue this good work.

Additionally, **this overlay does nothing to bring the city further into compliance with HB2001: The bill includes no such directive.** In fact, even though the bill allows local governments to regulate middle housing through siting and design, and requires them to comply with statewide land use planning goals, one look at the new “Z” overlay map makes it plain that the net effect is to “discourage the development of all middle housing types permitted in the area” (HB 2001 Section 2(5)).

We see no reason for Portland to take this move, now: **The omnibus wildfire bill, SB 762, requires that the entire state be mapped into one of five levels of wildfire risk**, from none to extreme. Additionally, the Wildland Urban Interface (WUI) is being mapped. **Wildfire building codes, defensible space standards, and other measures will flow from said mapping.** SB 762 also requires that new residential development in areas that fall in both the high or extreme wildfire risk categories and are in the WUI must meet (the now voluntary) wildfire building codes and comply with the State Fire Marshal’s defensible space standards. The risk mapping and WUI map will be completed in 2022. Any additional Portland regulations – if needed – should follow that process, not the grossly out-of-date wildfire maps being applied to the “Z” overlay currently. Finally, if the blunt instrument of overlay were to be applied, each subsequent wildfire map update **could potentially create yet another legislative process, requiring Measure 56 notification** of thousands of property owners each time the City changed the map.

C. Realizing Deeper Affordability:

*Under the RIP2 Proposed Draft, even mission-driven builders will struggle to deliver 4-plex homes affordable to lower-income families: Current codes drive one building type - a three-story stacked flat - typically requiring condominiums. Rather than applying the simpler land division process only to 2-to-4-plexes, we strongly encourage the City to expand this tool to 6-plexes as well. This would be a game-changer for affordable first-time homeownership opportunities reaching families making up to 60% MFI, by **taking full advantage of the RIP1 Deeper Affordability Bonus.** The below proposed changes will help realize this two-story building type:*

- C(1): **Find a way to allow fee-simple land division for 6-plexes building types in order to take full advantage of the Deeper Affordability Bonus.**
- C(2): Allow a **second set of standards for two-story 4-6 townhomes**, improving site layout, lessening neighborhood impact, and expanding utilization of the Deeper Affordability Bonus for homeownership (at least 50% at 60% MFI).
 - Maximum height of 30 feet (as opposed to current 35 feet);
 - Setbacks on all sides for two story buildings should be 5 feet, allowing 6 units 15 feet deep on a 5,000 sf lot;
 - Outdoor space requirements do not work in most instances for creating attractive townhomes situated well on the lot. Instead, apply standards more similar to RM1/RM2 recreational space language for townhomes in any zone. Here, specifically, apply an alternate standard of minimum open area of 48 sf per dwelling that can overlap with setbacks. (This results in a greater outdoor area, 288 sf in total, exceeding the current shared 250 sf requirement);
 - Lot Coverage & FAR: Expand current coverage caps to accommodate larger, family-sized (3+ bedroom) homes. Lot coverage should be increased to 65% to allow for two-story townhomes built to 1.2 FAR and lots to be split.

Further Policy Rationale

The spirit of SB 458 supports expanding first-time homeownership opportunities to families who have been shut out of generational wealth-building by decades of covenants, zoning, and other segregationist policies. **If we are serious about block-level income diversification and desegregation, and opening up our neighborhoods as areas of opportunity for everyone, it will take precisely this kind of targeted policy intervention.** In addition, SB458 specifically names townhomes as a housing type for which expedited land-divisions would be most beneficial for affordability. Giving builders, both non-profits and mission-driven private developers, more flexibility in terms of building type and offering greater use of fee-simple lot division will benefit the many low-income families that are mortgage ready, but earn nowhere near what is needed to purchase an average Portland home.

D. Townhouses or “attached houses” and middle-income affordability:

Attached homes in Portland are quickly being proved one of the best ways currently available to provide less-expensive homeownership opportunities. To better provide homeownership opportunities at middle-income affordability, we suggest the following to help ensure that our local land use codes and our financial incentives all align for maximum delivery of middle-income homes:

- D(1): Make it clear in any proposed code language that the **expedited land division process mandated by SB458 be fully applied to create fee-simple townhome homeownership opportunities.**
- D(2): As outlined above in the Deeper Affordability section, apply the two-story, 30’ high townhomes alternative standard more generally: Allowing two-story buildings instead of boxing townhomes into three-story stacked flats is less impactful to neighborhoods, more viable for builders, and will result in more opportunities for middle-income fee-simple homeownership.
- D(3): **Increase the allowed number of attached homes for projects delivering middle-income affordability:** Allow projects up to 6 units if 100% of homes meet Portland Housing Bureau’s Homebuyer Opportunity Limited Tax Exemption (“HOLTE”) program, offering ALL homes at the sale price and income guidelines per the program, no subsidies required. This would provide a powerful tool to help increase Portland’s ability to deliver middle-income first-time homeownership opportunities.

Further Policy Rationale:

HB2001 explicitly names townhouses as a “middle housing” type, and SB458 provides for “middle housing land divisions,” meaning “a partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758 (2) or (3).” As such they are required to be allowed to use the expedited land division process as created through SB458. Contrary to what is assumed by the draft language in RIP 2.0, a townhouse project can be proposed as a middle housing type on a qualifying lot and then the expedited land division process, currently in statute but enhanced by SB458, must be allowed to be executed to divide those lots so the proposed attached houses can be created. Not only does this comply

with the combined intent of HB2001 and SB458 to make the development of middle housing easier, more efficient, and presumably cost effective, it complies with the law as written.

Over the course of RIP1, we heard time and again from communities realizing homeownership for the first time how valuable their own front door is, and how much fee-simple ownership is preferred to a condominium. We believe that the above small changes to code will help realize first-time homeownership opportunities for many more Portlanders.

E. Other SB458 Implementation:

Two additional considerations, more universally applied, will be instrumental in making sure that SB458 is implemented accurately and can meet its intent: To provide lower-cost, fee-simple ownership opportunities for middle housing:

- **E(1): Stormwater and sewer facilities should be allowed to utilize shared services:** This is vital if we expect expedited land divisions to be utilized at all: It will likely be extremely difficult (if not impossible) to have separate storm and sewer systems for each unit. Currently, new courtyard homes and townhomes situated back on lots in RM1 are being successfully developed with shared services: Use these projects as examples on how to work with service bureaus on clear standards.
- **E(2):** Develop a pathway for ADUs to be considered for fee-simple ownership opportunities. A fuller explanation is below.

F. Cottage Clusters

The decision in the RIP2 Proposed Draft to allow cottage clusters on minimum 5,000 sf lots will greatly support the provision of smaller clusters of three to four detached units, while incentivizing preservation of existing homes. However, many rules proposed for cottage clusters are unnecessarily limiting, particularly for larger sites. We suggest the following changes so that the “clear and objective” process is not unduly burdensome:

- **F(1): Permit up to 50% of units within a cottage cluster to be attached side-by-side duplexes.** This cluster code would be much more viable because it would allow more units to be sited on a lot, and allow for interesting projects that are still very representative of the goals of the cottage cluster policy. Portland already has very attractive clusters built in just this way, albeit through the slightly more onerous Planned Development process. Added benefits of allowing some attached options include better flexibility for different site characteristics including terrain and pedestrian navigation, decreased construction costs per unit, and increased energy efficiency.
- **F(2):** Ensure that pedestrian paths to cottages, where design dictates, are allowed to be counted as part of the shared courtyard. For small clusters, e.g. of 3-4 homes in particular, this helps standards be met in a more useful & attractive site layout.

- F(3): **Allow cottage clusters in R20**: There is no reason to limit this housing type, which is often ideal for larger lots and for building community in less-connected places. Even if only a few cottage clusters are ultimately built due to other constraints, why not allow them where it works? Further, permitting cottages in R20 areas will help advance the City's equity goals by permitting middle housing throughout all neighborhoods - including areas zoned R20 that are disproportionately higher income.
- F(4): Eliminate the limit of 16 cottages per project: **A maximum of 16 units per cottage cluster site does not appear to match the OARs**, which do not include or permit a total cap on the number of units per site. Coupled with the proposed maximum site size of 1 acre, the proposed 16-unit limit could result in projects with densities too low for viability and affordability. Cottage cluster best practices suggest at least 25 units per acre is needed. (E.G. see Milwaukie Cottage Cluster Feasibility Study).
- F(5): Ensure that cluster code provisions continue to **incentivize the preservation of existing houses in cottage cluster infill projects**, including options that could be applied effectively on 5,000 and 10,000 lots. Options include:
 - Reduce required open space by 50 square feet per unit if an existing house is preserved; and/or
 - Reduce required setbacks between units by 2' or similar measures if an existing house is preserved.
- F(6): Increase the number of cottages allowed per common outdoor area to 12 or even 16 units: The proposed cap of 8 units per cluster is quite low and does not reflect successful cottage projects built to date, especially if some side-by-side duplex cottages are allowed. This would also eliminate the need for the complicated trade-off between shared courtyard space and unit separation.
- F(7): Allow small clusters to be built on lots smaller than 5,000 sf. Requiring each lot to be 5,000 sf or larger eliminates many lots from the cottage cluster option. Instead simply allow cottage clusters on smaller lots as long as the rest of the code can be met, and align minimum lot sizes with standards for triplexes/4-plexes.

G. Make ADUs Eligible for SB 458 Lot Divisions

*Allowing detached plexes greatly expands flexibility to develop multiple units per lot, and we urge the City to build upon their work with RIP1 allowing plexes on lots previously restricted to single-detached units, mirroring advancements in best practices. While initial statewide middle housing development projections look slow to deliver new units, allowing fee-simple partitioning of detached ADUs will provide the most immediate affordable housing option available in Portland. **This one change would greatly expand opportunities for fee-simple homeownership of small, detached units, including future detached ADUs, through the new middle housing expedited lot division standards.***

- G(1): Redefine dwelling definitions of duplexes, triplexes and 4-plexes to allow detached units in addition to attached units, in order to provide greater flexibility for development.
 - In the alternative, the city could allow these small-plexes only if the existing or primary home is preserved.

- G(2): This change would also allow current and future detached ADUs to be reclassified as a "duplex." Providing that they can meet the "duplex" development regulations, including building code and utility separation requirements, these changes would allow for ADUs on fee-simple lots to be sold as more affordable housing options, through the new middle housing expedited land division process.

Further Policy Rationale

Developers and realtors in Portland express that the market appetite for purchasing detached units is far stronger than the appetite for attached units. Detached plex development:

- Makes middle housing production feasible on more lots;
- Allows average homeowners to participate in the middle housing development by adding units to a lot already developed with a single detached unit, providing an alternative to demolitions required to create attached plex development which mostly limits development to professional developers.
- Allows for the preservation of the existing primary structure.
- Helps preserve familiar aesthetics while enabling middle housing development, just like ADUs.
- Gives flexibility for site topography and layout challenges.
- Smaller, individual detached plex or duplex units can be built under simpler residential building code standards saving cost and making conventional financing easier to obtain.

Bend, Oregon has allowed detached plexes for several years. Bend city planners stated the following benefits of this option:

- Flexibility of detached plex development allows for tree preservation and an option to overcome topographic site challenges.
- Privacy preferences: Detached development not sharing a wall; easier potential for separate outdoor areas.
- Improved flexibility to convert a garage, to build above it, or use the garage location for the 2nd units.
- Allows for the preservation of an existing house,
- Sometimes more affordable than adding a unit to an existing house.

During the public rulemaking process, DLCD concurred with these benefits, and incorporated developed plexes as the standard for the HB 2001 model code.

This one change would make the roughly 2,000 existing detached ADUs in the city potentially eligible to be divided and sold overnight, far faster than 2,000 new units can be built.

Under the proposed draft rules, the regulations will allow conversion of an attached, bump-out ADU into a duplex, followed by fee-simple partitioning. This is an extremely rare type of ADU in Portland, and the new entitlement will not be used much or at all. We seek to extend this same entitlement to detached ADUs, where it actually *will* be used. **In the near term, it is likely that a subset of the existing 2,000 detached ADUs would be interested in undergoing the process of ‘converting’ it to a duplex, paying the SDCs, meeting the utility separation requirements, and then selling off the parcel.** Homeowners would be financially rewarded for such conversion in the form of doubling or tripling the contributory value of their detached ADU relative to its contributory value when it's sold in a bundle along

with the primary dwelling. Similarly, unlocking the ability to incrementally add a detached unit on a lot, and sell it separately, creates a viable pathway for middle housing development at a larger scale. It opens up entrepreneurial opportunities for homeowners and small-scale developers and lenders to finance and build additional housing to sell at relatively modest prices in backyards.

We understand that this change would require the City to consider lot coverage (15% lot coverage for detached accessory structures) and height standards (20ft for detached accessory structures), but we believe that the changes are relatively straightforward, and will result in significant increase in utilization of RIP and the market production of much less expensive housing options.

Currently, contributory valuation of ADUs remains a barrier to their development. This impacts the appraisals of ADUs, which in turn, impacts the ability to obtain construction loan financing. By establishing a market value through the fee simple sale and purchase of ADUs, we can start to establish a clean baseline valuation for this type of development. This will assist in spurring more ADU development as a viable investment option for homeowners nationally.

Being able to sell this type of small, discreet infill housing independently would put ADUs on parity with other forms of middle housing that have been specifically designated as 'middle housing' in HB 2001, but which are likely more expensive to develop. Allowing for these fee-simple detached homes is a catalyst for intergenerational household wealth-building capacity that will be desirable to families at a lower cost than other current development offerings.

We thank you sincerely for your continued work to improve and update our code, and your unrelenting dedication to housing our full community affordably.

Signed,

Members of the Build Small Coalition,

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