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AMENDED AGENDA
EUGENE CITY COUNCIL
March 6, 2019

12:00 p.m. CITY COUNCIL WORK SESSION
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401

Meeting of March 6, 2019;
Her Honor Mayor Lucy Vinis Presiding

Councilors

Betty Taylor, President	Emily Semple, Vice President
Mike Clark	Greg Evans
Chris Pryor	Claire Syrett
Jennifer Yeh	Alan Zelenka

Note: This agenda has been amended to reflect the addition of Item 2.

12:00 p.m. EUGENE CITY COUNCIL WORK SESSION
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401

1. **WORK SESSION: Oregon HB 2001 (2019 Regular Session)**

2. **WORK SESSION: Community Safety Initiative**

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EUGENE CITY COUNCIL
AGENDA ITEM SUMMARY

Work Session: Oregon HB 2001 (2019 Regular Session)

Meeting Date: March 6, 2019 | Agenda Item Number: 1
Department: Planning and Development Department | Staff Contact: Alissa Hansen
www.eugene-or.gov | Contact Telephone Number: 541-682-5508

ISSUE STATEMENT
This work session was requested by the Intergovernmental Relations Committee to allow the full City Council to review and discuss HB 2001, a bill under consideration by the 2019 Oregon Legislature.

BACKGROUND
HB 2001 was introduced by the Speaker of the House of Representatives, Tina Kotek. The Speaker's office has identified the goal of HB 2001 as: "increase housing choice for households of different ages, sizes, and incomes in single-family neighborhoods." HB 2001 is provided as Attachment A.

The bill includes these main elements:

1. Defines "middle housing" as duplexes, triplexes, quadplexes and cottage clusters;
2. Requires cities with populations greater than 10,000 to allow, within their urban growth boundaries, in areas zoned for detached single family dwellings, the development of at least one "middle housing" type on each lot, subject to reasonable regulations related to siting and design.
3. Requires cities with populations greater than 10,000 to update their land use regulations before January 1, 2021, to allow middle housing as required by the bill. Cities that do not update their land use codes before January 1, 2021, will be required to apply the model middle housing code developed by the Land Conservation and Development Commission.
4. Directs the Department of Consumer and Business Services to adopt changes to building codes related to middle housing types.
5. Provides that local governments may not require that a system development charge for middle housing be paid prior to issuance of an occupancy permit for the dwelling.
6. Provides that an applicant to develop middle housing is entitled to attorney fees if the middle housing application is denied by the City but the applicant appeals and prevails at the Land Use Board of Appeals.
7. Clarifies that owner occupancy requirements and requirements to construct off-street parking are not reasonable regulations related to siting and design of accessory dwelling units.

Several of the City's adopted 2019 Legislative Priorities may affect the council's consideration of this bill. On the one hand, one of the adopted 2019 Land Use legislative priorities provides that "Eugene opposes state or federal legislative or regulatory pre-emption of local land use laws and authorities." As written, HB 2001 would pre-empt some local authority around the development and implementation of land use regulations related to middle housing. On the other hand, the 2019 Legislative Priorities also include directives that align with the proposed legislation, including:

- Eugene supports the preservation and expansion of programs and tools to fund the development and preservation of housing affordable to low-income persons.
- Eugene supports the preservation and expansion of land use and community planning tools that enable the development of affordable housing.

Finally, the following legislative priority may indicate support for HB 2001, if the bill is amended to provide more clarity and to increase local control:

- To the extent the legislature establishes mandates that require Eugene to take certain actions, Eugene supports legislation that provides clarity, and incorporates flexibility to the extent possible. Eugene also supports timely and efficient state technical support and funding to provide assistance in implementation of such mandates.

Envision Eugene includes recommendations calling for expanding housing variety and choice by facilitating the building of smaller, clustered and attached housing. Participants in the recent Housing Tools & Strategies process voiced strong support for by-right housing options, including duplexes, triplexes, cottage clusters, and smaller homes on smaller lot sizes in all single-family zones and revision of the land use code to allow for development of more diverse "missing middle" housing types

The City's Intergovernmental Relations Manager continues to work with the Eugene Area Legislative Delegation and other key lawmakers under the direction of "Oppose, unless amended" received at the IGR meeting on February 13, 2019, by requesting clarification and by working with the League of Oregon Cities staff on potential amendments.

Relevant Meetings

- HB 2001 was introduced onto the House Floor on 1/14/19, referred to House Committee on Human Services and Housing on 1/18/19, and a Public Hearing was held on 2/11/19. The League of Oregon Cities Provided Testimony as part of the Public Hearing, provided as Attachment B.
- League of Oregon Cities meeting with Speaker Kotek was held on 1/31/19. Councilor Pryor attended the meeting and represented Eugene. At the meeting, Speaker Kotek provided an outline of the bill's main items, provided as Attachment C.
- City of Eugene IGR Meeting was held on 2/13/19. The IGR Committee discussed HB 2001 with staff from the Planning Division, the City Attorney's office and the IGR Manager. The IGR Committee unanimously voted to "Oppose, HB 2001 unless amended." The IGR Committee also unanimously agreed that a City Council work session should be scheduled to discuss HB 2001.

PREVIOUS COUNCIL DIRECTION
City Council has not had previous discussions or decisions on HB 2001.

COUNCIL OPTIONS
City Council can vote to take any of the following positions on the bill:

- Oppose
- Oppose unless amended
- Support
- Support with amendments
- Neutral

The current position adopted by the IGR Committee is "Oppose, unless amended."

CITY MANAGER'S RECOMMENDATION
The City Manager recommends to maintain the "Oppose, unless amended" position.

SUGGESTED MOTION
Move to adopt the position on HB 2001 of "Oppose, unless amended" and direct the City Manager or designee to provide regular updates on the progress of HB 2001 to the IGR Committee and City Council.

ATTACHMENTS
A. HB2001 – Introduced
B. HB2001 – League of Oregon Cities written testimony from 2/11/19 Public Hearing
C. HB2001 – Middle Housing Detailed Outline, from Speaker Kotek 1/31/19

FOR MORE INFORMATION
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80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

House Bill 2001

Sponsored by Representative KOTEK (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Requires cities with population greater than 10,000 and counties with population greater than 15,000 to allow middle housing in lands zoned for single-family dwellings within urban growth boundary. Requires Land Conservation and Development Commission to draft model code. Requires cities and counties to amend their comprehensive plan and land use regulations to conform with requirement by December 31, 2020, or to directly apply model code developed by commission. Requires Department of Consumer and Business Services to amend Low-Rise Residential Dwelling Code to apply to low-rise middle housing and to amend State of Oregon Structural Specialty Code to not apply to low-rise middle housing.

Allows attorney fees, beginning January 1, 2021, for prevailing applicant whose proposal to develop middle housing is denied.

Prohibits conditioning approval of accessory dwelling unit within urban growth boundary on off-street parking availability or owner occupancy.

Prohibits local governments from requiring system development charges to be paid by developer of middle housing before occupancy permit is issued.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to housing; creating new provisions; amending ORS 197.312; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) As used in this section:

(a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) "Middle housing" means:

(A) Duplexes;

(B) Triplexes;

(C) Quadplexes; and

(D) Cottage clusters.

(2) Each city with a population greater than 10,000 and each county with a population greater than 15,000 shall allow, within its urban growth boundary in areas zoned for detached single-family dwellings, the development of at least one middle housing type on each lot, subject to reasonable local regulations related to siting and design.

SECTION 3. No later than December 31, 2020:

(1) Notwithstanding ORS 197.646, each local government subject to section 2 of this 2019 Act shall update its comprehensive plan and land use regulations to implement section 2 of this 2019 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing code.

(3) A local government that has not adopted its own comprehensive plan and land use

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

regulations under subsection (1) of this section shall directly apply the model code developed by the commission under subsection (2) of this section under ORS 197.646 (3).

SECTION 4. (1) It is the policy of the State of Oregon to reduce to the extent practicable administrative and permitting costs and barriers to the construction of middle housing, as defined in section 2 of this 2019 Act, while maintaining safety, public health and the general welfare with respect to construction and occupancy.

(2) Notwithstanding ORS 455.035, on or before January 1, 2021, the Department of Consumer and Business Services shall adopt changes to:

(a) The Low-Rise Residential Dwelling Code to apply the code to all middle housing types; and

(b) The State of Oregon Structural Specialty Code to exempt all middle housing that is three stories or less above grade from requirements of the code.

SECTION 5. Section 6 of this 2019 Act is added to and made a part of ORS 223.297 to 223.314.

SECTION 6. A local government may not require that a system development charge for middle housing, as defined in section 2 of this 2019 Act, be paid prior to the issuance of an occupancy permit for the dwelling. The local government may enforce the system development charge by an encumbrance against the property, but may not charge any interest on the system development charge prior to the issuance of the occupancy permit.

SECTION 7. ORS 197.312, as amended by section 7, chapter 15, Oregon Laws 2018, is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(5)(a) 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.

(b) As used in this subsection[,]**:**

(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(B) "Reasonable local regulations relating to siting and design" does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.

(6) Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.

SECTION 8. Section 2 of this 2019 Act is amended to read:

Sec. 2. (1) As used in this section:

(a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) "Middle housing" means:

(A) Duplexes;

(B) Triplexes;

(C) Quadplexes; and

(D) Cottage clusters.

(2) Each city with a population greater than 10,000 and each county with a population greater than 15,000 shall allow, within its urban growth boundary in areas zoned for detached single-family dwellings, the development of at least one middle housing type on each lot, subject to reasonable local regulations related to siting and design.

(3) An applicant whose proposal to develop middle housing under this section is denied is entitled to attorney fees if the applicant is the prevailing party on an appeal to the Land Use Board of Appeals.

SECTION 9. (1) Sections 2, 3, 4 and 6 of this 2019 Act and the amendments to ORS 197.312 by section 7 of this 2019 Act become operative on January 1, 2020.

(2) The amendments to section 2 of this 2019 Act by section 8 of this 2019 Act become operative on January 1, 2021.

(3) The Land Conservation and Development Commission, the Department of Consumer and Business Services and the Residential and Manufactured Structures Board may take any actions before the operative date specified in subsection (1) of this section necessary to enable the commission to exercise, on or after the operative date specified in subsection (1) of this section, the duties required under section 3 of this 2019 Act.

SECTION 10. In addition to and not in lieu of any other appropriation, there is appropriated to the Land Conservation and Development Commission, for the biennium beginning July 1, 2019, out of the General Fund:

(1) The amount of $_____ for the purpose of enforcing section 3 (1) of this 2019 Act through enforcement actions as provided in ORS 197.319 to 197.335; and

(2) The amount of $_____ for the activities of the commission under section 3 (2) and (3) of this 2019 Act.

SECTION 11. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect

on its passage.

League of Oregon Cities

February 11, 2019

Chair Keny-Guyer, Vice-Chairs Noble & Sanchez, Members of the House Human Services and Housing Committee:

As you know the League of Oregon Cities represents all 241 incorporated cities in the state of Oregon. As an organization, we advocate for cities to be able to solve issues at the local level. This allows locally elected officials to hear how problems like housing shortages are impacting local residents, approach the issue with a collaborative and locally focused process, and be held directly accountable when they are not addressing the problems. Cities across the state have expressed significant concerns about the need for housing, and they are looking to increase partnership with the state in addressing the complex, multi-dimensional issue of increasing housing construction.

However, in conversations across the state, with cities of varying sizes, the solutions to the issues in each city looks different. Some areas are seeing a lot of interest in development, with large developments and experienced developers coming to the table. Others do not have enough labor force to see more than a few units develop each year, and the developers that are working are smaller scale with limited experience beyond single family unit development. Each city that is investing local resources into housing are balancing a variety of needs, interests, and goals for the city. None have found a single fix that will address either the supply or price issues, but many are working their way through the process to reduce local barriers, increase incentives, and leverage the development opportunities to get a variety of housing types.

HB 2001 presents a proposal for a solution to a few aspects of the issues surrounding the development on certain types of units, but cities are concerned that its one-sized solution fails to account for the realities that cities wrestle with when they make decisions about zoning, fiscal policy, and community involvement. However, we do not believe it should be the end of this conversation. Instead, our goal is to see how cities and the state can better work together toward their shared goal of increasing housing supply that is affordable to a variety of incomes. State mandates like that proposed in HB 2001 do not often lead to the best outcomes because they cannot address the circumstances that prevent the goals from being attained.

Cities are also investing in finding local solutions, looking to update their current codes and plans, updating the information on which we make decisions, and starting community conversations to determine how to improve development outcomes. Cities are looking for assistance in their efforts, not mandates that direct significant resources to implement. The LOC has also been working to find ways to partner with the state to provide additional information and assistance from the current state resources to see improvements for all cities.

Below are our primary concerns with HB 2001, as introduced, and some alternatives that might create opportunities to see an increased planning for a variety of unit types.

Concerns

Overall, cities are concerned about the lack of clarity related to many terms of this bill. In addition, while there is a line for appropriations for the Department of Land Conservation and Development (DLCD) to implement their role, there is no consideration of the fiscal impacts to cities. To enact the updates to the codes called for by this legislation will take resources and staff, and without proper funding from the state, we will not be able to meet this mandate.

Section 2: Mandatory Zoning Changes

The Oregon statewide land use planning process is governed by statute, goals and rules, and is an ever changing process that cities and counties must follow when planning for future growth. The land use planning system requires an overall framework that guides and limits local decisions for growth patterns. The 19 Land Use Goals govern the expectations of what local governments do in their plans. There are a number of goals that impact planning for housing development: Goal 1 (Citizen Involvement); Goal 2 (Land Use Planning); Goal 10 (Housing); Goal 11 (Public Facilities and Services); Goal 12 (Transportation; and Goal 14 (Urbanization). Other goals also come into consideration when you are looking at developability such as Goal 6 (Air, Water and Land Resources Quality) and Goal 7 (Areas Subject to Natural Hazards).

One of the keys to land use system is that cities must plan 20 years out for their development based on research, analysis, and vision. These decisions are codified in each city's comprehensive plans, which lays out the expectations for development and redevelopment of all areas of the state. This includes, but is not limited to, zoning areas within the city's jurisdiction. It also requires the establishment of the urban growth boundary (UGB) and the expectations of for development levels as a city's boundary's expand. However, control of development in the UGB remains a county determination unless the city and county reach and agreement on urban growth within the area. These are complicated issues that require coordination between local governments.

This process is deliberate, and time consuming. It does not encourage cities to work at market speed. Since cities are planning twenty years out, the codes and plans do not always anticipate shifts in the market that can come with time. As market trends change and cities see demands for new or different housing types, it can take time to do the proper work to provide for these units in long-term plans. However, cities want to be inviting to development, and they can and will adapt to new markets when they have the resources to do so.

Goal 1

The proposal in HB 2001 section 2 to mandate an increased density in single family zoning impacts a number of these goals and the planning requirements that come with them. First, Goal 1, which was vital at the time the land use system was developed, requires that cities provide citizens with the opportunity for meaningful participation in the land use process. Cities that provide a good process for citizen involvement have to commit to providing opportunities for residents to influence outcomes and design their communities. When done correctly it increases long-term success when plans turn into development. When a community in invested in the outcomes and understands the reasoning for the decision, they are less likely to oppose change.

By placing a state-wide mandate on larger cities, the result is less trust from the citizens that they have a meaningful opportunity to participate. Short timelines, like 16 months, might allow for proper notice, but they do not account for the time that many cities spend with their community to garner community support for a change as significant as this. This in turn leads to more citizens upset that the state can come in and determine what their community must look like. This undermines trust and increases the sense in many communities that the land use system is nothing more than the state acting as the planning commission and avoiding citizens in the land use process.

The reason for Goal 1 was to address the deep mistrust many communities had with the implementation of Senate Bill 100 in 1973. While Oregonians have learned how to work within the land use system and support it's preservation goals, mandate that undermine their ability to influence the process and decisions will only lead to questions about the utility and viability of the land use system.

Goals 11 & 12 and the price of infrastructure

Goals 11 and 12 require cities to go beyond making zoning decisions about where housing and economic development types of uses will go. There is a requirement that cities plan for and provide adequate services are provided for the site. Services include water, sewer, stormwater, and roads. These are hard infrastructure systems that require significant work to ensure they will meet future needs. Changes in the amount of use an area is therefore not accounted for when the systems are originally planned. Infrastructure is placed in or on the ground to meet the needs that is planned for at the time. Redevelopment plans must also account for changes in need, and provide plans for accomplishing any upgrades needed to the system

Not only must the capacity of the local infrastructure be constructed to the potential need if an area is completely develop, there must also be plans for financing the needed infrastructure under Goals 11 and 12. Because of the limited tools for paying for infrastructure improvement,

many cities have adopted system development charges (SDCs) to determine how much new construction will pay for the capacity they require from each infrastructure system (water, sewer, stormwater, transportation, and/or parks). The methodology for SDCs requires cities to make capital improvement plans, determine what costs will be by project, and determine the capacity that is used by each development type. Then the city establishes a rate for each type of unit constructed. Each city can then set a policy of how much of these costs will be paid by developers and how much will not be charged, which means the funds are provided by the city's general fund or current user fees. These SDCs are set using complex methodologies and intentional conversations about what cities can afford to forego if they do not charge the total cost. They are also dependent on knowing the capacity needs for future development.

All of this means that if a city did not plan for a potential doubling, tripling, or quadrupling of capacity, it is unclear that new units added into older neighborhoods will be serviceable. There may be some capacity left in the infrastructure, but it is finite. The pipes are a certain size; the roads are built to an expected level of travel. Too much redevelopment may require upsizing this infrastructure and there are not plans or funds to do this. SDCs are unlikely to account for this type of development and are based on area-wide projects set out in the capital improvement plan.

Many of our cities are currently struggling to find the funding from many sources to provide for maintenance and improvement of their current systems. The 2017 legislature opened up a large amount of funding for transportation projects, but that is only part of the infrastructure question. A 2016 survey by the LOC found that the 120 cities that responded to the survey identified $7.6 billion in water related projects, including drinking and wastewater treatment plants, water storage, stormwater improvements, and water and wastewater line repair or replacement. And that was at 2016 levels of expected development and growth.

To comply with comprehensive planning processes, cities need to plan for these services. Without local knowledge of where these infrastructure deficiencies might make it impossible to allow for the infill required by this legislation, cities cannot plan for the infrastructure facilities that are required under Goal 11 or the transportation systems that need to be in place under Goal 12. The rules that guide cities under the land use system require cities to not set goals for development that cannot be properly serviced, but HB 2001 does not account for the time and need for such planning.

Smaller communities impacted

While there is a population threshold for cities required to do this work, smaller communities will still be impacted. Counties over 15,000 in population are also required to provide for this level of development inside their urban growth boundaries, and those UGBs include all of the cities within

the county regardless of the population size. However, the counties are not responsible for providing the services or preparing these areas for development. Often the urban growth management agreements require the planning and development of these areas to be city responsibilities. The comprehensive plan of these cities must account for the services and development patterns allowed under the zoning established by the county. Therefore, smaller cities without much capacity will be required to do some of this work too.

Impacts to cities already working on improving housing outcomes
In the last two years, cities have been required to allow accessory dwelling units (ADUs) for all detached houses that exist within their boundaries (SB 1051 (2017)). Many cities are trying to recover the planning time lost to making changes to the zoning and development codes required to ensure that the regulations around these units would be considered reasonable. Some cities are struggling with how they will permit these units based on undersized infrastructure in these neighborhoods. Anecdotally, cities have not seen a large increase in ADUs as a result, but further research is needed to see if this will change over time.

Other cities were required to examine the city's rental picture because they are "heavily rent burdened" under HB 4006 (2018). While city staff had to use time to finalize reports and conduct meetings, they are also using it as an opportunity to inform their policies to improve the rental market. They are focusing on policies identified by the work of local housing committees, research or the direction of council. These cities are at the beginning of these efforts and shifting focus to address another new mandate will be disruptive.

The state also provided significant funding to help cities to update the information that supports their housing plans (their housing needs analysis ("HNA")) or update local codes to reduce barrier to housing types. These reviews are scheduled to be completed by the end of this fiscal year, and the next steps for many of these communities will be adopting or implementing the new code. The desire for this type of assistance was so popular that the Department of Land Conservation and Development had to turn away more than half the applicants. We are supporting efforts to create a dedicated program to help more communities meet these needs in the next biennium (HB 2075 (2019)).

Cities in the Metro region are working to address the requirements of Metro's 2040 plan and finding ways to ensure that the newly passed Metro housing bond can be used in these cities to increase affordable housing. These planning efforts require planning staff and housing specialists to focus on how to meet the needs of the hardest to house: very-low and low income residents.

HB 2001 section 2 will take away from the time and staff capacity on these ongoing projects. The efforts mentioned above are often just underway in the last couple of years, and this new mandate will slow them down or put them on pause. This can prevent more robust work of removing locally identified barriers from while they focus staff capacity on changing zoning codes and land use regulations to ensure it is clear what may be built based on lot dimensions.

No guarantee units will be built or affordable

Finally, if the purpose is to increase housing choice for moderate income families, there is no guarantee that any new units will be produced or that they will be sold or rented at prices affordable to moderate incomes. Nothing provides cities with the ability to control for these needs, only that they allow duplexes, triplexes, quadplexes and cottage clusters be built. Without any assurance that the market is going to produce these units at moderate prices, many officials question if the work is worth the result.

Cities that have recently adopted similar provisions within their code are still too early in the process to see if there is a change in developer behavior. One of the reasons to support local control of land use is that allows cities to experiment with these concepts and see what changes actually move the needle on housing type diversity. For example, it appears that zoning is not the only impediment to triplex and quadplex development. There are many proposed reasons that these units are not being developed where they are currently allows including: cost to build based on building code requirements; limited number of developers familiar with construction – particularly outside of the Metro area; and risk adverse financial markets limiting funding for construction of these units. More needs to be done to address the variety of issues around the difficulty to get these particular unit types developed.

<u>Section 3: Model Code Development</u>

While model codes have been used to provide guidance for local jurisdictions as they implement land use planning codes. In fact, guidance for cities that try to help conversations and analysis related to land use planning are often welcomed by cities as a strong starting point for local implementation. Having this type of product provided by the state is often exactly what cities are asking for.

However, they are often not suited to direct implementation. A model code developed to apply to all cities cannot properly account for natural hazards, serviceability, and other vital pieces of the land use system as they apply on the ground. The purpose of this section is clearly to ensure that cities enact local codes or else find themselves implementing another code, but it fails to account for the ability of the appeals process from being used to delay implementation. It leaves

citizens further outside the process and leaves cities in the position of trying to enact a code that does not relate to local conditions.

Section 6: SDC Deferral

As outlined above, the SDC process requires a lot of particular work by a local government to keep capital improvement plans and cost estimates updated. But, the policy choices about how to structure payments and cutting costs also require an important balance of needs. Cities that have enacted a deferral program have to balance their ability to ensure the collection of the fee, timing the repayment to help prevent buyers from being charged an unexpected SDC bill, and preservation that the SDC payments are consistent enough to assure bonding agencies that the fees will be collected to repay bonds.

If SDCs are not payed, cities must find other funds from either property taxes or user fees to make up the difference. Deferred SDCs leave cities at greater risk if projects are abandoned before the developer has fully constructed the project and a lien on the property is of limited value if the project is half constructed. When local jurisdictions implement deferral programs they can plan to have funding to cover this possibility.

In addition, cities are not the only local government to charge SDCs and are not always the building official in charge of providing a certificate of occupancy. This will complicate the problems with this section. We respectfully request that this section be removed from the bill so that we can have a conversation about the variety of pieces that fit into this complex issue.

Section 7: ADU regulations

Cities implement restrictions on parking and owner/occupancy for a variety of reasons. The primary reason is to reduce conflicts between neighbors. Parking and having an owner on the property reduce these issues. Similarly, cities are trying to address ongoing concerns that these unit types will not be used for long-term occupancy and instead be used as a short-term rental. Regulations like these might be the only means of increasing the likelihood that these units will used for long-term rentals and that conflicts with neighbors is reduced. This reduces the barriers to ADUs being an excepted as additional units in a city's overall housing supply.

Section 8: Attorney Fees

LUBA currently has the authority to shift attorney fees in two instances. LUBA may shift fees in some instances, but LUBA must award attorney fees if a non-prevailing party presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

The LOC has been informed that the intention of this section is to require challengers to missing middle housing applications pay for the developer's attorney fees if they lose on an appeal to the Land Use Board of Appeals (LUBA). However, as written, HB 2001 will only shift these fees to cities because only cities can deny a land use application. Success on appeal, however, is not a good measure because a decision to remand can occur for a variety of technical issues which the local government can remedy. Technically, the applicant is the prevailing party, but the final decision may remain the same. Mandatory fee shifting in these cases is not always justified if the final decision to deny an application can be supported after remanded to the local government to re-review.

Alternative Solutions

As stated at the beginning, cities are not opposed to increasing missing middle housing options, and the LOC is working to best determine what cities need to provide increased options in ways that are workable at the local level. Here are some options that will improve outcomes:

Change the definition of "Needed Housing"

Currently, ORS 197.303 outlines the housing types that must be included in housing plans. The "middle housing" options are not listed explicitly as types that are "needed". If the state wants to see more of this housing allowed in single family zones, it would best to include it as a needed housing type. Similarly to the requirement that cities account for manufactured housing on single family residential lots, these types of units can be added in lower density or single family zones. This would mean that when cities update housing plans, they would be required to include these types of units in those areas. Essentially, the state would be requiring cities to include the outcome in their local planning process and would prevent a city from outright banning this type of development.

Increase Assistance to Cities

Cities number one request for changing housing development outcomes is increased technical assistance. They are looking for assistance in a number of ways: 1) funding for planning processes; 2) continued investment in updating housing needs analysis and development codes for housing; 3) model codes for newer housing configurations like cottage clusters that can be adapted to meet local needs; 4) increased capacity for local projects through investment by the state; 5) assistance with determining what incentives will have the biggest impact in increasing development; and 6) assistance with moving from long-term planning to implementation of development plans. As the state is investing more in housing, including this type of assistance to local governments will create the opportunity for better outcomes for developers because the cities will be ready to work on the project.

Enforcement of Current Standards

Many cities that are working on updating their housing planning do not want to be facing mandates based on cities that are failing to meet current standards. If cities are not meeting the requirements of the land use system, there are tools available to seek enforcement of the law. The LOC recognizes that DLCD works primarily as a partner in development and has spent a number of years improving relationships with cities to increase the opportunity to move cities through the land use process and meet requirements. Therefore, the enforcement tools are less likely to be used. However, all cities are being impacted by mandates proposed but only some cities are failing to act. If the enforcement tools are not sufficiently diverse to allow for a gentle push before significant enforcement mechanism, then there is room for improvement in the system.

Infrastructure Investment

Second to technical assistance, investment by the state in infrastructure is vital to development of new, different units. Historically, there were resources from the federal and state government that could be used to increase development of infrastructure and to make sure it has the capacity to service increased density in all areas of the city. This is a vital component to successful development, but there has been a disinvestment in infrastructure financing by the federal and state government that has left cities to try to find the means of building, maintaining and improving services. Given revenue limitations and the difficulty of charging current users for future user's infrastructure, shifting these costs onto developers is the only means of insuring the new capacity is paid for. Investment by the state in programs like the Special Public Works Fund or creating a program for SDC payment by the state would have a significant impact on housing development and housing prices.

Conclusion

We share the goal of seeing more housing developed across the state, but we insist that it be done using locally informed processes that reflect the needs, desires, and will of our communities. We are happy to continue working toward better housing outcome that will be successful in seeing more units developed.

HB2001 – Middle Housing Detailed Outline

Goal: To increase housing choice for households of different ages, sizes, and incomes in single-family neighborhoods.

I. Middle Housing Code

- All cities with a population greater than 10,000 and all counties with a population greater than 15,000 must allow m idle housing in areas zoned to allow single-family housing within the UGB. Middle housing is defined as:
  - Duplexes,
  - Triplexes,
  - Quads,
  - Cottage clusters.
- Local jurisdictions may implement reasonable regulations related to siting and design of middle housing.
- Each jurisdiction must update their local land use regulations to allow middle housing by **December 31, 2020** (18-months after sine die).

II. Model Middle Housing Code

- The Land Conservation and Development Commission (LCDC) shall develop a model middle housing code.
- If a local jurisdiction does not update their land use regulations to allow middle housing by Dec 31, 2020, they must apply the model code developed by LCDC.

III. Internal Conversions

- To reduce barriers to internal conversions of existing single-family homes, the bill directs the Department of Consumer and Business Services to create residential building code for triplexes and quadplexes, which are currently under the commercial code.

IV. System Development Charges

- To reduce barriers to development of middle housing, local jurisdictions must defer the assessment of System Development Charges (SDCs) for middle housing until the issuance of the certificate of occupancy.

V. Attorney's Fees on Appeal

- If a middle housing applicant has their project appealed, and the applicant prevails, they must be awarded attorney's fees.

VI. Accessory Dwelling Units (ADUs)

- In 2017, the legislature passed a bill that required local jurisdictions above a certain size to allow an Accessory Dwelling Unit (ADU) on each lot that allows a detached single-family home, within the UGB. The bill allowed local governments to apply reasonable regulations related to siting and design to ADUs.
- HB2001 clarifies that "reasonable regulations related to siting and design" do not include:
  - **Owner Occupancy:** requiring that the ADU or primary structure be occupied by the property owner.
  - **Additional Off-Street Parking:** requiring that the homeowner provide additional off-street parking as a condition of developing an ADU.

VII. Funding

- The state will provide funding to LCDC to develop model code and to DLCD to enforce the provisions of the bill.

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