



Bureau of Planning and Sustainability
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February 11, 2019

Representative Alissa Keny-Guyer, Chair
House Committee on Human Services and Housing
900 Court St NE, HR E
Salem, OR 97301

RE: HB 2001

Dear Chair Keny-Guyer and Members of the Committee:

Thank you for the opportunity to comment on HB 2001. The City of Portland shares the commitment expressed in HB 2001 to encourage development of a range of housing types, including middle housing. The City’s stated this commitment through our recently adopted and state-acknowledged *2035 Comprehensive Plan*, which includes the policies addressing innovative housing types, housing choice, and development of middle housing.¹ These policies are consistent with the purpose and intent of HB 2001. The City is acting to implement these comprehensive plan policies through its proposed Residential Infill Project (RIP). RIP has entailed over three years of community discussions and deliberations to change Portland’s zoning code to allow duplexes, triplexes and four-plexes on most lots in our single-dwelling zones. These changes will be considered by City Council later this year. The City is also actively working on updates to its multi-dwelling code through its Better Housing by Design project. In 2018, the City adopted an updated Central City 2035 Plan and Inclusionary Housing program. In each of these efforts, the City has carefully considered and balanced multiple objectives as required by the Oregon land use system, including citizen involvement, provision of affordable housing, protection of natural resources,

¹ Policy 5.4: “Housing types. Encourage new and innovative housing types that meet the evolving needs of Portland households, and expand housing choices in all neighborhoods. These housing types include but are not limited to single-dwelling units; multi-dwelling units; accessory dwelling units; small units; pre-fabricated homes such as manufactured, modular, and mobile homes; co-housing; and clustered housing/clustered services.”

Policy 5.6: “Middle housing. Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.”

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mitigation of natural hazards, and provision of infrastructure and services, such as transportation, transit, parks, water, sewer, and stormwater.

The City respectfully offers the following comments on specific provisions of HB 2001:

Timeline and Accountability (Section 3) - Local adoption by December 2020 is an aggressive timeline, especially given that a model code may not be available until then. The Oregon land use system has never had automatic implementation imposed by LCDC on local jurisdictions for failure to act, raising serious concerns about state pre-emption and home rule authority. We urge the Committee to reconsider this approach and instead explore other types of sanctions for enforcement. At a minimum, the legislation should allow 12-months for DLCD to develop model code, then 16-months for local adoption by December 31, 2021.

Competing Land Use Goals (Section 2 and 3) - Oregon's statewide planning program requires cities to address and balance competing needs. The bill should clearly state the Legislature's priorities. For example, as currently written, Statewide Planning Goal 12's implementing administrative rule OAR 660-012-0060 would require cities amending their land use regulations to comply with the proposed law to simultaneously evaluate and accommodate the potential impact of the increased density on the transportation system. Our experience with the Residential Infill Project shows that that these zoning changes could change growth patterns that could make it difficult to meet mobility standards, especially on state highways, such as Powell Boulevard. Without an exemption from the administrative rule, jurisdictions may be unable to comply with the proposed legislation. They are also unlikely to be able to conduct a robust and inclusive public process, as required by Goal 1, and the technical analysis to support decision in 18-months. The bill should clarify that the local legislative process to increase middle housing does not require cities to conduct an analysis under OAR 660-012-0060. Similarly, this bill should expressly provide the flexibility for local jurisdictions to omit certain areas in order to comply with Goal 5 (Natural Resources), Goal 7 (Natural Hazards), and Goal 11 (Public Facilities).

Middle Housing Development Standards (Section 2) - As proposed, "reasonable local regulations related to siting and design" is a new, undefined term in regard to middle housing. The City recommends that middle housing standards instead be subject to the same "clear and objective" requirement as other housing types. Cities and counties must also retain local authority to address critical site-specific issues such as: sites with Goal 5 resource protections (floodplains, riparian areas, steep slopes, historic areas, etc.); whether to allow more density on sites that are far from transit or commercial services (e.g., should there be more units in the West Hills where there are no sidewalks and limited transit service); and minimum lot size to accommodate infill development. We urge the Committee to consider provisions that explicitly reserve cities' authority to address such considerations.



Accessory Dwelling Unit Development (Section 7) - The City supports the language in Section 7 with respect to prohibiting owner-occupancy requirements and excessive parking standards for ADUs.

Building Codes (Section 4) - This section reads too much like a mandate without the opportunity to address significant issues, especially regarding fire, life and safety requirements and ADA access. The rulemaking process described in HB 2663 may be more appropriate language:

The Department of Consumer and Business Services shall conduct a review of the state building code for the purpose of identifying code provisions that unnecessarily prohibit, restrict or create disincentives for the production of middle housing.

The department shall complete the review required by this section no later than one year after the effective date of this 2019 Act. No later than 90 days after completing the review, the department shall initiate rulemaking for the purpose of amending or repealing state building code provisions identified during the review as unnecessarily prohibiting, restricting or creating disincentives for middle housing.

As part of the code review and rulemaking, BCD should include:

- 13D sprinkler systems for triplexes and quadplexes, if the structure is not more than three stories above grade or larger than 6,000 square feet and does not contain any room over 400 square feet
- Type C visitability requirements as outlined in the International Code Council (ICC) A117.1 (2009)
- The provisions of the OSSC regarding accessibility
- Factors, such as fire separation distance, construction type, and area of wall openings

These changes will provide a more cost-effective means of producing housing units. Effectively integrating visitability requirements into new development to produce age-friendly housing, which is a priority for many communities, not to mention putting Oregon on the national stage for thinking beyond the front step.



System Development Charges (SDCs) (Section 6) - The proposed SDC provision in Section 6 raises significant concerns for the ability of the City to ensure fair, timely, and efficient payment of charges for the impact of development on public infrastructure. The City of Portland permitting system is currently designed to charge SDC fees at building permit issuance. The proposed prohibition on local governments requiring payment prior to issuance of certificate of occupancy would mean local governments no longer have leverage to ensure timely payment in the development process, instead having to rely upon a lien placed on the property. This would necessitate designing and implementing a new collection process and would require additional staff and legal costs to recover SDC charges on an ongoing basis. The proposed provision could also result in the SDC being passed onto unsuspecting buyers if the property is transferred before the lien is recorded. The City currently offers builders an option to voluntarily enter an agreement for payment deferral (currently set at 6, 9, or 12 months depending on the project valuation, and subject to interest). The City routinely grants such requests. We respectfully urge the Committee to strike Section 6 from the bill. Short of that, we request that local governments retain authority to devise or adapt deferral programs for payment that are not necessarily tied to issuance of certificate of occupancy (such as deferral for a fixed increment of time or until the applicant requests an initial inspection) and that ensure fair, timely, and efficient collection of fees.

Land Use Appeals (Section 8) - We are concerned by the proposal that a developer is entitled to attorney fees if the developer prevails at the Land Use Board of Appeals (LUBA), regardless of the basis of prevailing. This is punitive to cities and sets a dangerous precedent. Under existing law, the prevailing party is already entitled to seek attorney fees at LUBA. ORS 197.830(15)(b) allows LUBA to award reasonable attorney fees to the prevailing party when LUBA finds that the other party presented a position without probable cause to believe the position was well-founded in law or factually supported information. Moreover, ORS 197.835(10)(b) already requires LUBA to award attorney fees if LUBA reverses the local government's decision for making a decision outside the range of discretion allowed. LUBA did exactly that when a city failed to apply standards that were clear and objective.² There is no standard in the proposed provision as to when attorney fees are allowed. Rather, this proposal appears intended to require the City to pay attorney fees when a developer appeals to LUBA and prevails *on any grounds*.

²Walters v. City of Eugene, LUBA No. 2016-024.



The City of Portland supports the goal of encouraging middle housing and hopes to work with the Committee and stakeholders on these issues moving forward. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Zehnder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joe Zehnder
Interim Director

