

## Division 46 Middle Housing in Medium and Large Cities

*Rules as adopted by the Land Conservation and Development Commission December 9, 2020*

### 660-046-0000 Purpose

The purpose of this division is to prescribe standards guiding the development of Middle Housing types as provided in Oregon Laws 2019, chapter 639. OAR 660-046-0010 to OAR 660-046-0235 establish standards related to the siting and design of Middle Housing types in urban growth boundaries. OAR 660-046-0300 to OAR 660-046-0370 establish the form and substance of an application and the review process to delay the enactment of standards related to the siting and design of Middle Housing types in areas with significant infrastructure deficiencies.

### 660-046-0010 Applicability

1. A local government that is a Medium City or Large City must comply with this division.
2. Notwithstanding section (1), a Medium or Large City need not comply with this division for:
  - a. Lots or Parcels that are not zoned for residential use, including but not limited to Lots or Parcels zoned primarily for commercial, industrial, agricultural, or public uses;
  - b. Lots or Parcels that are Zoned For Residential Use but do not allow for the development of a detached single-family dwelling; and
  - c. Lots or Parcels that are not incorporated and that are zoned under an interim zoning designation that maintains the land's potential for planned urban development.
3. A Medium or Large City may regulate Middle Housing to comply with protective measures (including plans, policies, and regulations) adopted and acknowledged pursuant to statewide land use planning goals. Where Medium and Large Cities have adopted, or shall adopt, regulations implementing the following statewide planning goals, the following provisions provide direction as to how those regulations shall be implemented in relation to Middle Housing, as required by this rule.
  - a. Goal 5: Natural Resources, Scenic, and Historic Areas – OAR chapter 660, division 23, prescribes procedures, and in some cases, standards, for complying with Goal 5. OAR chapter 660, division 16 directed implementation of Goal 5 prior to division 23. Local protection measures adopted pursuant to divisions 23 and 16 are applicable to Middle Housing.
    - A. Goal 5 Natural Resources – Pursuant to OAR 660-023-0050 through 660-023-0110, Medium and Large Cities must adopt land use regulations to protect water quality, aquatic habitat, and the habitat of threatened, endangered and sensitive species. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 5.
      - i. Medium and Large Cities may apply regulations to Duplexes that apply to detached single-family dwellings in the same zone;
      - ii. Medium and Large Cities may limit the development of Middle Housing other than Duplexes in significant resource sites identified and protected pursuant to Goal 5; and
      - iii. If a Medium or Large City has not adopted land use regulations pursuant to OAR 660-023-0090, it must apply a 100-foot setback to Middle Housing developed along a riparian corridor.
    - B. Goal 5: Historic Resources – Pursuant to OAR 660-023-0200(7), Medium and Large Cities must adopt land use regulations to protect locally significant historic resources. This includes regulations applicable to Middle Housing to comply with protective measures as it relates to the integrity of a historic resource or district. Protective measures shall be adopted and applied as provided in OAR 660-023-0200. Medium and Large Cities may apply regulations adopted under OAR 660-023-0200 to Middle Housing that apply to detached single-family dwellings in the same zone, except as provided below. If a Medium or Large City has not adopted land use regulations to protect significant historic resources listed on the National Register of Historic Places, it must apply protective

measures to Middle Housing as provided in OAR 660-023-0200(8)(a) until the Medium or Large City adopts land use regulations in compliance with OAR 660-023-0200. Medium or Large Cities may not apply the following types of regulations specific to Middle Housing:

- i. Use, density, and occupancy restrictions that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings; and
- ii. Standards that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings.

- b. Goal 6: Air, Water and Land Resources Quality – Pursuant to OAR 660-015-0000(6), a Medium or Large City may limit development within an urban growth boundary to support attainment of federal and state air, water, and land quality requirements. Medium and Large Cities may apply regulations adopted pursuant to Goal 6 to the development of Middle Housing.
- c. Goal 7: Areas Subject to Natural Hazards – Pursuant to OAR 660-015-0000(7), Medium and Large Cities must adopt comprehensive plans (inventories, policies, and implementing measures) to reduce risk to people and property from natural hazards. Such protective measures adopted pursuant to Goal 7 apply to Middle Housing, including, but not limited to, restrictions on use, density, and occupancy in the following areas:
  - A. Special Flood Hazard Areas as identified on the applicable Federal Emergency Management Agency Flood Insurance Rate Map; and
  - B. Other hazard areas identified in an adopted comprehensive plan or development code; provided the Medium or Large City determines that the development of Middle Housing presents a greater risk to life or property than the development of detached single-family dwellings from the identified hazard. Greater risk includes but is not limited to actions or effects such as:
    - i. Increasing the number of people exposed to a hazard;
    - ii. Increasing risk of damage to property, built, or natural infrastructure; and
    - iii. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.

- d. Goal 9: Economic Development - Pursuant to OAR 660-009-0025, Medium and Large Cities must adopt measures adequate to implement industrial and other employment development policies, including comprehensive plan designations. Medium and Large Cities may limit the development of Middle Housing on Lots or Parcels Zoned For Residential Use designated for future industrial or employment uses.
- e. Goal 11: Public Facilities and Services - Pursuant to OAR 660-011-0020(2), a public facility plan must identify significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. This includes public facility projects to support the development of Middle Housing in areas zoned for residential use that allow for the development of detached single-family dwellings. Following adoption of Middle Housing allowances by a Large City, the Large City shall work to ensure that infrastructure serving undeveloped or underdeveloped areas, as defined in OAR 660-046-0320(8), where Middle Housing is allowed is appropriately designed and sized to serve Middle Housing.
- f. Goal 15: Willamette Greenway – Pursuant to OAR 660-015-0005, Medium and Large Cities must review intensifications, changes of use or developments to insure their compatibility with the Willamette River Greenway. Medium and Large Cities may allow and regulate the development of Middle Housing in the Willamette Greenway, provided that applicable regulations adopted pursuant to Goal 15 comply with ORS 197.307.
- g. Goal 16: Estuarine Resources – Pursuant to OAR 660-015-0010(1) and OAR chapter 660, division 17, Medium and Large Cities must apply land use regulations that protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality. Medium and Large Cities may prohibit Middle Housing in areas regulated to

protect estuarine resources under Goal 16 in the same manner as the Medium or Large City prohibits detached single-family dwellings to protect estuarine resources under Goal 16.

- h. Goal 17: Coastal Shorelands – Pursuant to OAR 660-015-0010(2) and OAR 660-037-0080, local governments must apply land use regulations that protect shorelands for water-dependent recreational, commercial, and industrial uses. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 17. Local governments may apply regulations to Middle Housing that apply to detached single-family dwellings in the same zone.
- i. Goal 18: Beaches and Dunes – Pursuant to OAR 660-015-0010(3), Medium and Large Cities must apply land use regulations to residential developments to mitigate hazards to life, public and private property, and the natural environment in areas identified as Beaches and Dunes under Goal 18. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 18 including but not limited to restrictions on use, density, and occupancy; provided the development of Middle Housing presents a greater risk to life or property than development of detached single-family dwellings. Greater risk includes but is not limited to actions or effects such as:
  - A. Increasing the number of people exposed to a hazard;
  - B. Increasing risk of damage to property, built or natural infrastructure; and
  - C. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.

4. For the purposes of assisting local jurisdictions in adopting reasonable siting and design standards for Middle Housing, the applicable Model Code adopted in this section will be applied to A Local Government That Has Not Acted to comply with the provisions of ORS 197.758 and this division. For such Medium and Large Cities, the applicable Model Code completely replaces and pre-empts any provisions of those Medium and Large Cities' development codes that conflict with the Model Code. The Land Conservation and Development Commission adopts the following Middle Housing Model Codes:

- a. The Medium City Model Code as provided in Exhibit A; and
- b. The Large City Model Code as provided in Exhibit B.

5. This division does not prohibit Medium or Large Cities from allowing:

- a. Single-family dwellings in areas zoned to allow for single-family dwellings; or
- b. Middle Housing in areas not required under this division.

### 660-046-0020 Definitions

As used in this division, the definitions in ORS 197.015 and ORS 197.758 et seq. apply, unless the context requires otherwise. In addition, the following definitions apply:

1. “A Local Government That Has Not Acted” means a Medium or Large City that has not adopted acknowledged land use regulations that are in compliance with ORS 197.758 and this division.
2. “Cottage Cluster” means a grouping of no fewer than four detached dwelling units per acre with a footprint of less than 900 square feet each that includes a common courtyard. A Medium or Large City may allow Cottage Cluster units to be located on a single Lot or Parcel, or on individual Lots or Parcels.
3. “Department” means the Department of Land Conservation and Development.
4. “Design Standard” means a standard related to the arrangement, orientation, materials, appearance, articulation, or aesthetic of features on a dwelling unit or accessory elements on a site. Design standards include, but are not limited to, standards that regulate entry and dwelling orientation, façade materials and appearance, window coverage, driveways, parking configuration, pedestrian access, screening, landscaping, and private, open, shared, community, or courtyard spaces.
5. “Detached single-family dwelling” means a detached structure on a Lot or Parcel that is comprised of a single dwelling unit.
6. “Duplex” means two attached dwelling units on a Lot or Parcel. A Medium or Large City may define a Duplex to include two detached dwelling units on a Lot or Parcel.
7. “Goal Protected Lands” means lands protected or designated pursuant to any one of the following statewide planning goals:
  - a. Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces;

- b. Goal 6 Air, Water and Land Resource Quality;
- c. Goal 7 Areas Subject to Natural Hazards;
- d. Goal 9 Economic Development;
- e. Goal 15 Willamette River Greenway;
- f. Goal 16 Estuarine Resources;
- g. Goal 17 Coastal Shorelands; and
- h. Goal 18 Beaches and Dunes.

8. "Large City" means a city with a certified Portland State University Population Research Center estimated population of 25,000 or more or a city with a population over 1,000 within a metropolitan service district. A Large City includes unincorporated areas of counties within a metropolitan service district that are provided with sufficient urban services as defined in ORS 195.065. Sufficient urban services means areas that are within an urban service district boundary.

9. "Lot or Parcel" means any legally created unit of land.

10. "Master Planned Community" means a site that is any one of the following:

- a. Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary that is zoned for or proposed to be Zoned For Residential Use, and which is not currently developed with urban residential uses, for which a Large City proposes to adopt, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan;
- b. Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary for which a Large City adopted, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan after the site was incorporated into the urban growth boundary; or
- c. Added to the Large City's urban growth boundary after January 1, 2021 for which the Large City proposes to adopt, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan.

11. "Medium City" means a city with a certified Portland State University Population Research Center estimated population more than 10,000 and less than 25,000 and not within a metropolitan service district.

12. "Middle Housing" means Duplexes, Triplexes, Quadplexes, Cottage Clusters, and Townhouses.

13. "Model Code" means the applicable Model Code developed by the Department and contained in the exhibits in OAR 660-046-0010(4).

14. "Quadplex" means four attached dwelling units on a Lot or Parcel. A Large City may define a Quadplex to include any configuration of four detached or attached dwelling units on one Lot or Parcel.

15. "Siting Standard" means a standard related to the position, bulk, scale, or form of a structure or a standard that makes land suitable for development. Siting standards include, but are not limited to, standards that regulate perimeter setbacks, dimensions, bulk, scale, coverage, minimum and maximum parking requirements, utilities, and public facilities.

16. "Sufficient Infrastructure" means the following level of public services to serve new Triplexes, Quadplexes, Townhouses, or Cottage Cluster development:

- a. Connection to a public sewer system capable of meeting established service levels.
- b. Connection to a public water system capable of meeting established service levels.
- c. Access via public or private streets meeting adopted emergency vehicle access standards to a city's public street system.
- d. Storm drainage facilities capable of meeting established service levels for storm drainage.

17. "Townhouse" means a dwelling unit that is part of a row of two or more attached dwelling units, where each unit is located on an individual Lot or Parcel and shares at least one common wall with an adjacent dwelling unit.

18. "Townhouse Project" means one or more townhouse structures constructed, or proposed to be constructed, together with the development site where the land has been divided, or is proposed to be divided, to reflect the Townhouse property lines and the any commonly owned property.

19. "Triplex" means three attached dwelling units on a Lot or Parcel. A Large City may define a Triplex to include any configuration of three detached or attached dwelling units on one Lot or Parcel.

20. "Zoned for Residential Use" means a zoning district in which residential dwellings are the primary use and which implements a residential comprehensive plan map designation.

#### **660-046-0030 Implementation of Middle Housing Ordinances**

1. Before a Medium or Large City amends an acknowledged comprehensive plan or a land use regulation to allow Middle Housing, the Medium or Large City must submit the proposed change to the Department for review and comment pursuant to OAR chapter 660, division 18.
2. In adopting or amending regulations or amending a comprehensive plan to allow Middle Housing, a Medium or Large City must include findings demonstrating consideration, as part of the post-acknowledgement plan amendment process, of methods to increase the affordability of Middle Housing through ordinances or policies that include but are not limited to:
  - a. Waiving or deferring system development charges;
  - b. Adopting or amending criteria for property tax exemptions under ORS 307.515 to ORS 307.523, ORS 307.540 to ORS 307.548 or ORS 307.651 to ORS 307.687 or property tax freezes under ORS 308.450 to ORS 308.481; and
  - c. Assessing a construction tax under ORS 320.192 and ORS 320.195.
3. When a Medium or Large City amends its comprehensive plan or land use regulations to allow Middle Housing, the Medium or Large City is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

#### **660-046-0040 Compliance**

1. A Medium or Large City may adopt land use regulations or amend its comprehensive plan to comply with ORS 197.758 et seq. and the provisions of this division.
2. A Medium or Large City may request from the Department an extension of the time allowed to complete the action under subsection (1) pursuant to the applicable sections of OAR 660-046-0300 through OAR 660-046-0370.
3. A Medium City which is A Local Government That Has Not Acted by June 30, 2021 or within one year of qualifying as a Medium City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0010(4) in its entirety to all proposed Middle Housing development applications until such time as the Medium City has adopted provisions under section (1).
4. A Large City which is A Local Government That Has Not Acted by June 30, 2022 or within two years of qualifying as a Large City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0010(4) for the specific Middle Housing type that is not in compliance with the relevant rules in this division to all proposed development applications for that specific Middle Housing type until such time as the Large City has adopted provisions under section (1).
5. If a Medium or Large City has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the Medium or Large City's land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an appellate court solely on procedural grounds, the Medium or Large City is deemed to have acted. Accordingly, the Medium or Large City may continue to apply its own land use regulations and comprehensive plan as they existed prior to the adoption of land use regulations or comprehensive plan amendments that were the subject of procedural remand until the first of the two options:
  - a. The Medium or Large City has adopted land use regulations or amended its comprehensive plan in response to the remand; or
  - b. 120 days after the date of the remand. If the Medium or Large City has not adopted land use regulations or amended its comprehensive plan within 120 days of the date of the remand, the Medium or Large City is deemed not to have acted under sections (3) and (4).
6. If a Medium or Large City has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the Medium or Large city's land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an

appellate court on any substantive grounds, the Medium or Large City is deemed to have not acted under sections (3) and (4).

7. If a Medium or Large City acknowledged to be in compliance with this division subsequently amends its land use regulations or comprehensive plan, and those amendments are remanded by the Land Use Board of Appeals or an appellate court, the Medium or Large City shall continue to apply its land use regulations and comprehensive plan as they existed prior to the amendments until the amendments are acknowledged.
8. Where a Medium or Large City directly applies the Model Code in accordance with sections (3), (4) and (5), the Model Code completely replaces and pre-empts any provisions of that Medium or Large City's development code that conflict with the applicable sections of the Model Code.

#### **660-046-0050 Eligible Local Governments**

1. If a local government was not previously a Medium City and a certified Portland State University Population Research Center population estimate qualifies it as a Medium City, the local government must comply with this division within one year of its qualification as a Medium City.
2. If a local government was not previously a Large City and a certified Portland State University Population Research Center population estimate qualifies it as a Large City, the local government must comply with this division within two years of its qualification as a Large City.

#### **660-046-0100 Purpose of Middle Housing in Medium Cities**

OAR 660-046-0105 through OAR 660-046-0130 are intended to measure compliance with ORS 197.758 et seq. and Goal 10 Housing for Medium Cities.

#### **660-046-0105 Applicability of Middle Housing in Medium Cities**

1. A Medium City must allow for the development of a Duplex, including those Duplexes created through conversion of an existing detached single-family dwelling, on each Lot or Parcel zoned for residential use that allows for the development of detached single-family dwellings.
2. OAR 660-046-0105 through OAR 660-046-0130 do not require a Medium City to allow more than two dwellings units on a Lot or Parcel, including any accessory dwelling units.

#### **660-046-0110 Provisions Applicable to Duplexes in Medium Cities**

1. Medium Cities may regulate Duplexes to comply with protective measures, including plans, policies and regulations, as provided in OAR 660-046-0010(3).
2. Medium Cities may regulate siting and design of Duplexes, provided that the regulations;
  - a. Are clear and objective standards, conditions, or procedures consistent with ORS 197.307; and
  - b. Do not, individually or cumulatively, discourage the development of Duplexes through unreasonable costs or delay.
3. Siting and design standards that create unreasonable cost and delay include any standards applied to Duplex development that are more restrictive than those applicable to detached single-family dwellings in the same zone.
4. Siting and design standards that do not, individually or cumulatively, discourage the development of Duplexes through unreasonable cost and delay include only the following:
  - a. Regulations to comply with protective measures adopted pursuant to statewide land use planning goals provided in OAR 660-046-0010(3);
  - b. Permitted uses and approval process provided in OAR 660-046-0115;
  - c. Siting standards provided in OAR 660-046-0120;
  - d. Design standards in Medium Cities provided in OAR 660-046-0125;
  - e. Duplex Conversions provided in OAR 660-046-0130; and
  - f. Any siting and design standards contained in the Model Code referenced in section OAR 660-046-0010(4).

## 660-046-0115 Permitted Uses and Approval Process

Medium Cities must apply the same approval process to Duplexes as detached single-family dwellings in the same zone. Pursuant to OAR 660-007-0015, OAR 660-008-0015, and ORS 197.307, Medium Cities may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of Duplexes. Nothing in this rule prohibits a Medium City from adopting an alternative approval process for applications and permits for Middle Housing based on approval criteria that are not clear and objective as provided in OAR 660-007-0015(2), OAR 660-008-0015(2), and ORS 197.307(6).

## 660-046-0120 Duplex Siting Standards in Medium Cities

The following standards apply to all Duplexes:

1. Minimum Lot or Parcel Size: A Medium City may not require a minimum Lot or Parcel size that is greater than the minimum Lot or Parcel size required for a detached single-family dwelling in the same zone. Additionally, Medium Cities shall allow the development of a Duplex on any property zoned to allow detached single-family dwellings, which was legally created prior to the Medium City's current lot size minimum for detached single-family dwellings in the same zone.
2. Density: If a Medium City applies density maximums in a zone, it may not apply those maximums to the development of Duplexes.
3. Setbacks: A Medium City may not require setbacks to be greater than those applicable to detached single-family dwellings in the same zone.
4. Height: A Medium City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone.
5. Parking:
  - a. A Medium City may not require more than a total of two off-street parking spaces for a Duplex.
  - b. Nothing in this section precludes a Medium City from allowing on-street parking credits to satisfy off-street parking requirements.
6. Lot Coverage and Floor Area Ratio: Medium Cities are not required to apply lot coverage or floor area ratio standards to new Duplexes. However, if the Medium City chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for a Duplex that is less than established for detached single-family dwelling in the same zone.
7. A Medium City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must allow the granting of the same exceptions to Duplexes.

## 660-046-0125 Duplex Design Standards in Medium Cities

1. Medium Cities are not required to apply design standards to new Duplexes. However, if the Medium City chooses to apply design standards to new Duplexes, it may only apply the same clear and objective design standards that the Medium City applies to detached single-family structures in the same zone.
2. A Medium City may not apply design standards to Duplexes created as provided in OAR 660-046-0130.

## 660-046-0130 Duplex Conversions

Additions to or conversion of an existing detached single-family dwelling to a Duplex is allowed, pursuant to OAR 660-046-0105(2), provided that the conversion does not increase nonconformance with applicable clear and objective standards in the Medium City's development code.

## 660-046-0200 Purpose of Middle Housing in Large Cities

OAR 660-046-0205 through OAR 660-046-0235 are intended to measure compliance with ORS 197.758 et seq. and Goal 10 Housing for Large Cities.

## 660-046-0205 Applicability of Middle Housing in Large Cities

1. A Large City must allow for the development of Duplexes in the same manner as required for Medium Cities in OAR 660-046-0100 through OAR 660-046-0130.

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:
  - a. Goal-Protected Lands: Large Cities may regulate Middle Housing on Goal-Protected Lands as provided in OAR 660-046-0010(3);
  - 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.
      - 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. If a proposed Middle Housing development exceeds the planned public service capacity of a Master Plan, 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.
      - 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.
      - 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.
    - B. If a Large City has adopted a master plan or a plan that functions in the same manner as a master plan before January 1, 2021, it may limit the development of Middle Housing other than Duplexes provided it authorizes in the entire master plan area a net residential density of at least eight dwelling units per acre and allows all dwelling units, at minimum, to be detached single-family dwellings or Duplexes. A Large City may only apply this restriction to portions of the area not developed as of January 1, 2021, and may not apply this restriction after the initial development of any area of the master plan or a plan that functions in the same manner as a master plan, except that a Large City may prohibit redevelopment of other housing types, such as multi-family residential structures and manufactured home parks.
    - c. Impacted by State or Federal Law: A Large City must demonstrate that regulations or limitations of Middle Housing other than Duplexes are necessary to implement or comply with an established state or federal law or regulation on these types of lands.
  3. A Large City may:
    - a. Allow for the development of Triplexes, Quadplexes, Townhouses, and Cottage Clusters, including those created through conversion of existing detached single-family dwellings, in areas zoned for residential use that allow for the development of detached single-family dwellings as provided in OAR 660-046-0205 through OAR 660-046-0235; or
    - b. Apply separate minimum lot size and maximum density provisions than what is provided in OAR 660-046-0220, provided that the applicable Middle Housing type other than Duplexes is allowed on the following percentage of Lots and Parcels zoned for residential use that allow for the development of detached single-family dwellings, excluding lands described in subsection (2):
      - A. Triplexes – Must be allowed on 80% of Lots and Parcels;
      - B. Quadplexes - Must be allowed on 70% of Lots and Parcels;
      - C. Townhouses - Must be allowed on 60% of Lots and Parcels; and
      - D. Cottage Clusters – Must be allowed on 70% of Lots and Parcels.

- E. A Middle Housing type is “allowed” on a Lot or Parcel when the following criteria are met:
  - i. The Middle Housing type is a permitted use on that Lot or Parcel under the same administrative process as a detached single-family dwelling in the same zone;
  - ii. The Lot or Parcel has sufficient square footage to allow the Middle Housing type within the applicable minimum lot size requirement;
  - iii. Maximum density requirements do not prohibit the development of the Middle Housing type on the subject Lot or Parcel; and
  - iv. The applicable siting or design standards do not individually or cumulatively cause unreasonable cost or delay to the development of that Middle Housing type as provided in OAR 660-046-0210(3).
- F. A Large City must ensure the equitable distribution of Middle Housing by allowing, as defined in subsection (3)(b)(E) above, at least one Middle Housing type other than Duplexes and Cottage Clusters on 75 percent or more of all lots and parcels zoned for residential use that allow for the development of detached single-family dwellings within each census block group, with at least four eligible Lots and Parcels as described in subsection (2) of this section, within a Large City.
- G. Large Cities must demonstrate continuing compliance with subsection (3)(b) at the following intervals:
  - i. At the initial submittal of a Middle Housing comprehensive plan or land use regulation change, in accordance with OAR Chapter 660, Division 18;
  - ii. At any future Housing Capacity Analysis Deadline as provided in OAR 660-008-0045, except that a demonstration of continuing compliance will not be required earlier than six years after initial adoption of acknowledged land use regulations in compliance with this division; and
  - iii. With any future comprehensive plan or land use regulation changes that implements this division, in accordance with OAR Chapter 660, Division 18, for Large Cities that are not subject to the Housing Capacity Analysis Deadline as provided in OAR 660-008-0045, except that a demonstration of continuing compliance will not be required more frequently than once every six years after initial adoption of acknowledged land use regulations in compliance with this division.

4. Pursuant to OAR 660-046-0205 through OAR 660-046-0230, the following numerical standards related to Middle Housing types apply:

- a. Duplexes – Large Cities may allow more than two dwelling units on a Lot or Parcel, including any accessory dwelling units.
- b. Triples and Quadplexes – Large Cities may allow more than four dwelling units on a lot, including any accessory dwelling units.
- c. Townhouses – Large Cities must require at least two attached Townhouse dwelling units and must allow up to four attached Townhouse units subject to applicable siting or design standards as provided in OAR 660-046-0220 through OAR 660-046-0235. A Large City may allow five or more attached Townhouse dwelling units.
- d. Cottage Clusters –
  - A. A Large City is not required to set a minimum number of dwelling units in a Cottage Cluster, but if it chooses to, it may require a minimum of three, four, or five dwelling units in a Cottage Cluster. A Large City may allow, but may not require, greater than five units in a Cottage Cluster.
  - B. A Large City must allow up to eight cottages per common courtyard subject to applicable siting or design standards as provided in OAR 660-046-0220 through OAR 660-046-0235. Nothing in this section precludes a Large City from permitting greater than eight dwelling units per common courtyard.

## 660-046-0210 Provisions Applicable to Middle Housing in Large Cities

1. Large Cities may regulate Middle Housing to comply with protective measures, including plans, policies and regulations, as provided in OAR 660-046-0010(3).
2. Large Cities may regulate siting and design of Middle Housing, provided that the regulations;
  - a. Are clear and objective standards, conditions, or procedures consistent with the requirements of ORS 197.307; and
  - b. Do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable costs or delay.
3. Siting and design standards that do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable cost and delay include only the following:
  - a. Regulations to comply with protective measures adopted pursuant to statewide land use planning goals provided in OAR 660-046-0010(3);
  - b. Permitted uses and approval processes provided in OAR 660-046-0215;
  - c. Siting standards provided in OAR 660-046-0220;
  - d. Design standards in Large Cities provided in OAR 660-046-0225;
  - e. Middle Housing Conversions provided in OAR 660-046-0230;
  - f. Alternative siting or design standards provided in OAR 660-046-0235; and
  - g. Any siting and design standards contained in the Model Code referenced in section OAR 660-046-0010(4).

## 660-046-0215 Permitted Uses and Approval Process

Large Cities must apply the same approval process to Middle Housing as detached single-family dwellings in the same zone. Pursuant to OAR 660-008-0015 and ORS 197.307, Large Cities may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of Middle Housing consistent with the requirements of ORS 197.307. Nothing in this rule prohibits a Large City from adopting an alternative approval process for applications and permits for Middle Housing based on approval criteria that are not clear and objective as provided in OAR 660-007-0015(2), OAR 660-008-0015(2), and ORS 197.307(6).

## 660-046-0220 Middle Housing Siting Standards in Large Cities

1. Large Cities must apply siting standards to Duplexes in the same manner as required for Medium Cities in OAR 660-046-0120.
2. The following governs Large Cities' regulation of siting standards related to Tripleplexes and Quadplexes:
  - a. Minimum Lot or Parcel Size:
    - A. For Tripleplexes:
      - i. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is 5,000 square feet or less, the minimum Lot or Parcel size for a Triplex may be no greater than 5,000 square feet.
      - ii. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is greater than 5,000 square feet, the minimum Lot or Parcel size for a Triplex may be no greater than the minimum Lot or Parcel size for a detached single-family dwelling.
    - B. For Quadplexes:
      - i. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is 7,000 square feet or less, the minimum Lot or Parcel size for a Quadplex may be no greater than 7,000 square feet.
      - ii. If the minimum Lot or Parcel size in the zone for a detached single-family dwelling is greater than 7,000 square feet, the minimum Lot or Parcel size for a Quadplex may be no greater than the minimum Lot or Parcel size for a detached single-family dwelling.
    - C. A Large City may apply a lesser minimum Lot or Parcel size in any zoning district for a Triplex or Quadplex than provided in paragraphs A. or B.

- b. Density: If a Large City applies density maximums in a zone, it may not apply those maximums to the development of Quadplex and Triplexes.
- c. Setbacks: A Large City may not require setbacks greater than those applicable to detached single-family dwellings in the same zone.
- d. Height: A Large City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone, except a maximum height may not be less than 25 feet or two stories.
- e. Parking:
  - A. For Triplexes, a Large City may require up to the following off-street parking spaces:
    - i. For Lots or Parcels of less than 3,000 square feet: one space in total;
    - ii. For Lots or Parcels greater than or equal to 3,000 square feet and less than 5,000 square feet: two spaces in total; and
    - iii. For Lots or Parcels greater than or equal to 5,000 square feet: three spaces in total.
  - B. For Quadplexes, a Large City may require up to the following off-street parking spaces:
    - i. For Lots or Parcels of less than 3,000 square feet: one space in total;
    - ii. For Lots or Parcels greater than or equal to 3,000 square feet and less than 5,000 square feet: two spaces in total;
    - iii. For Lots or Parcels greater than or equal to 5,000 square feet and less than 7,000 square feet: three spaces in total; and
    - iv. For Lots or Parcels greater than or equal to 7,000 square feet: four spaces in total.
  - C. A Large City may allow on-street parking credits to satisfy off-street parking requirements.
  - D. A Large City may allow, but may not require, off-street parking to be provided as a garage or carport.
  - E. A Large City must apply the same off-street parking surfacing, dimensional, landscaping, access, and circulation standards that apply to single-family detached dwellings in the same zone.
  - F. A Large City may not apply additional minimum parking requirements to Middle Housing created as provided in OAR 660-046-0230.
- f. Lot or Parcel Coverage and Floor Area Ratio: Large Cities are not required to apply Lot or Parcel coverage or floor area ratio standards to Triplexes or Quadplexes. However, if the Large City applies Lot or Parcel coverage or floor area ratio standards, it may not establish a cumulative Lot or Parcel coverage or floor area ratio for Triplexes or Quadplexes that is less than established for detached single-family dwelling in the same zone.
- g. A Large City shall work with an applicant for development to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Triplex or Quadplex development application.

3. The following governs Large Cities' regulation of siting standards related to Townhouses:

- a. Minimum Lot or Parcel Size: A Large City is not required to apply a minimum Lot or Parcel size to Townhouses, but if it applies those standards, the average minimum Lot or Parcel size for Lot or Parcels in a Townhouse Project may not be greater than 1,500 square feet. A Large City may apply separate minimum Lot or Parcel sizes for internal, external, and corner Townhouse Lots or Parcels provided that they average 1,500 square feet, or less.
- b. Minimum Street Frontage: A Large City is not required to apply a minimum street frontage standard to Townhouses, but if it applies those standards, the minimum street frontage standard must not exceed 20 feet. A Large City may allow frontage on public and private streets or alleys; and on shared or common drives. If a Large City allows flag Lots or Parcels, it is not required to allow Townhouses on those Lots or Parcels.
- c. Density: If a Large City applies density maximums in a zone, it must allow four times the maximum density allowed for detached single-family dwellings in the same zone for the development of Townhouses or 25 dwelling units per acre, whichever is less.

- d. Setbacks: A Large City may not require front, side, or rear setbacks to be greater than those applicable to detached single-family structures in the same zone and must allow zero-foot side setbacks for Lot or Parcel lines where Townhouse units are attached.
- e. Height: A Large City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone. If a Large City requires covered or structured parking for townhouses, the applicable height standards must allow construction of at least three stories. If a Large City does not require covered or structured parking, the applicable height standards must allow construction of at least two stories.
- f. Parking:
  - A. A Large City may not require more than one off-street parking space per Townhouse dwelling unit.
  - B. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
  - C. A Large City must apply the same off-street parking surfacing, dimensional, landscaping, access, and circulation standards that apply to single-family detached dwellings in the same zone.
- g. Bulk and Scale: A Large City is not required to apply standards to control bulk and scale to new Townhouses. However, if a Large City chooses to regulate scale and bulk, including but not limited to provisions including Lot or Parcel coverage, floor area ratio, and maximum unit size, those standards cannot cumulatively or individually limit the bulk and scale of the cumulative Townhouse Project greater than that of a single-family detached dwelling.
- h. A Large City shall work with an applicant for development to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Townhouse development application.

4. The following governs Large Cities' regulation of siting standards related to Cottage Clusters:

- a. Minimum Lot or Parcel Size: A Large City is not required to apply minimum Lot or Parcel size standards to new Cottage Clusters. However, if a Large City applies standards to regulate minimum Lot or Parcel size for Cottage Clusters on a single Lot or Parcel, the following provisions apply:
  - A. If the minimum Lot or Parcel size in the same zone for a detached single-family dwelling is 7,000 square feet or less, the minimum Lot or Parcel size for a Cottage Cluster may be no greater than 7,000 square feet.
  - B. If the minimum Lot or Parcel size in the same zone for a detached single-family dwelling is greater than 7,000 square feet, the minimum Lot or Parcel size for a Cottage Cluster may not be greater than the minimum Lot or Parcel size for a detached single-family dwelling.
- b. Minimum Lot or Parcel Width: A Large City is not required to apply minimum Lot or Parcel width standards to Cottage Clusters. However, if a Large City applies standards to regulate minimum Lot or Parcel width for to Cottage Clusters, it may not require a minimum Lot or Parcel width that is greater than the standard for a single-family detached dwelling in the same zone.
- c. Density: A Large City may not apply density maximums to the development of Cottage Clusters. A Cottage Cluster development must meet a minimum density of at least four units per acre.
- d. Setbacks: A Large City may not require perimeter setbacks to be greater than those applicable to detached single-family dwellings in the same zone. Additionally, perimeter setbacks applicable to Cottage Cluster dwelling units may not be greater than ten feet. The minimum distance between structures may not be greater than what is required by applicable building code requirements or 10 feet.
- e. Dwelling Unit Size: A Large City may limit the minimum or maximum size of dwelling units in a Cottage Cluster, but must apply a maximum building footprint of 900 square feet per dwelling unit. A Large City may exempt up to 200 square feet in the calculation of dwelling unit footprint for an attached garage or carport. A Large City may not include detached garages, carports, or accessory structures in the calculation of dwelling unit footprint.
- f. Parking:

- A. A Large City may not require more than one off-street parking space per dwelling unit in a Cottage Cluster.
- B. A Large City may allow but may not require off-street parking to be provided as a garage or carport.
- C. Nothing in this section precludes a Large City from allowing on-street parking credits to satisfy off-street parking requirements.
- g. Lot or Parcel Coverage and Floor Area Ratio: A Large City may not apply Lot or Parcel coverage or floor area ratio standards to Cottage Clusters.
- h. Nothing in this division precludes a Large City from allowing Cottage Cluster dwelling units on individual Lots or Parcels within the Cottage Cluster development.
- i. A Large City shall work with an applicant for development to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Cottage Cluster development application.

#### **660-046-0225 Middle Housing Design Standards in Large Cities**

- 1. A Large City is not required to apply design standards to Middle Housing. However, if a Large City chooses to apply design standards to Middle Housing, it may only apply the following:
  - a. Design standards in the Model Code for Large Cities in OAR 660-046-0010(4)(b);
  - b. Design standards that are less restrictive than those in the Model Code for Large Cities in OAR 660-046-0010(4)(b);
  - c. The same clear and objective design standards that the Large City applies to detached single-family structures in the same zone. Design standards may not scale by the number of dwelling units or other features that scale with the number of dwelling units, such as primary entrances. Design standards may scale with form-based attributes, including but not limited to floor area, street-facing façade, height, bulk, and scale; or
  - d. Alternative design standards as provided in OAR 660-046-0235.
- 2. A Large City may not apply design standards to Middle Housing created as provided in OAR 660-046-0230.

#### **660-046-0230 Middle Housing Conversions**

- 1. Additions to, or conversions of, an existing detached single-family dwelling into Middle Housing is allowed in Large Cities pursuant to OAR 660-046-0205(2), provided that the addition or conversion does not increase nonconformance with applicable clear and objective standards, unless increasing nonconformance is otherwise permitted by the Large City's development code.
- 2. If Middle Housing is created through the addition to, or conversion of, an existing single-family detached dwelling, a Large City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must allow the granting of the same exceptions to Middle Housing.
- 3. A preexisting detached single-family dwelling may remain on a Lot or Parcel with a Cottage Cluster as described below:
  - a. The preexisting single-family dwelling may be nonconforming with respect to the requirements of the applicable code;
  - b. The preexisting single-family dwelling may be expanded up to the maximum height, footprint, or unit size required by the applicable code; however, a preexisting single-family dwelling that exceeds the maximum height, footprint, or unit size of the applicable code may not be expanded;
  - c. The preexisting single-family dwelling shall count as a unit in the Cottage Cluster;
  - d. The floor area of the preexisting single-family dwelling shall not count towards any Cottage Cluster average or Cottage Cluster project average or total unit size limits; or
  - e. A Large City may apply a time limit on the conversion of a single-family dwelling to a Cottage Cluster not to exceed five years.

### 660-046-0235 Alternative Siting or Design Standards

A Large City may adopt Siting or Design Standards not authorized by OAR 660-046-0220 or OAR 660-046-0225 as allowed under subsection (1) below if the city can demonstrate that it meets the applicable criteria laid out in either subsection (1) below. Siting or Design standards do not include minimum Lot or Parcel size and maximum density requirements.

1. A Large City must submit to the Department findings and analysis demonstrating that the proposed standard or standards will not, individually or cumulatively, cause unreasonable cost or delay to the development of Middle Housing. To demonstrate that, the Large City must consider how a standard or standards, individually and cumulatively, affect the following factors in comparison to what is would otherwise be required under OAR 660-046-0220 or OAR 660-046-0225:
  - a. The total time and cost of construction, including design, labor, and materials;
  - b. The total cost of land;
  - c. The availability and acquisition of land, including areas with existing development;
  - d. The total time and cost of permitting and fees required to make land suitable for development;
  - e. The cumulative livable floor area that can be produced; and
  - f. The proportionality of cumulative time and cost imposed by the proposed standard(s) in relationship to the public need or interest the standard(s) fulfill.