

## Division 46

### Middle Housing

#### 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 660-046-0130 establish standards related to the siting and design of Middle Housing types in urban growth boundaries.

#### 660-046-0010 Applicability

1. A local government that is a Medium City must comply with this division.
2. Notwithstanding section (1), a local government need not comply with this division for:
  - a. Lands that are not zoned for residential use, including but not limited to lands zoned primarily for commercial, industrial, agricultural, or public uses;
  - b. Residentially zoned lands that do not allow for the development of a detached single-family home; or
  - c. Lands that are not incorporated and that are zoned under an interim zoning designation that maintains the land's potential for planned urban development.
3. Local governments 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 local governments 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 OAR 660-046-0010.
  - a. Goal 5: Natural Resources, Scenic, and Historic Areas - Pursuant to OAR chapter 660, division 23, local governments must adopt land use regulations to protect identified resources under Goal 5, including regulations to comply with protective measures (including plans, policies, and regulations) applicable to Middle Housing.
    - A. Goal 5 Riparian Areas, Wetlands, and Wildlife Habitat – Pursuant to OAR 660-023-0050 through 660-023-0115, local governments 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. Local governments may apply regulations to Duplexes that apply to detached single-family dwellings in the same zone.
    - B. Goal 5: Historic Resources – Pursuant to OAR 660-023-0200(7), local governments must adopt land use regulations to protect locally significant historic resources . This includes regulations of 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. Local governments 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.
      - 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 7: Areas Subject to Natural Hazards – Pursuant to OAR 660-015-0000(7), local governments 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:

- B. Special Flood Hazard Areas as identified on the applicable FEMA Flood Insurance Rate Map (FIRM) ; or
- C. Other hazard areas identified in an adopted comprehensive plan or development code; provided the development of Middle Housing presents a greater risk to life or property than the development of detached single-family dwellings. 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;
  - iii. Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.
- c. Goal 15: Willamette Greenway – Pursuant to OAR 660-015-0005, cities and counties must review intensifications, changes of use or developments to insure their compatibility with the Willamette River Greenway. Local governments may regulate Middle Housing to comply with Goal 15 protective measures that apply to detached single-family dwellings in the same zone.
- d. Goal 16: Estuarine Resources – Pursuant to OAR 660-015-0010(1) and OAR chapter 660, division 17, local governments must apply land use regulations that protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality. Local governments may prohibit Duplexes and Middle Housing types other than Duplexes in areas regulated to protect estuarine resources under Goal 16.
- e. 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 Duplexes that apply to detached single-family dwellings in the same zone.
- f. Goal 18: Beaches and Dunes – Pursuant to OAR 660-015-0010(3), local governments 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. 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. This division does not prohibit local governments 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 197.758 et seq apply, unless the context requires otherwise. In addition:

1. “A local government that has not acted” means a local government that has not adopted acknowledged land use regulations that are in compliance with ORS 197.758 and this division.
2. “Department” means the Department of Land Conservation and Development.
3. “Detached single-family dwelling” means a detached structure on a Lot or Parcel that is comprised of a single dwelling unit, either site built or a manufactured dwelling.
4. “Duplex” means two attached dwelling units on one Lot or Parcel. A Medium City may define a Duplex to include two detached dwelling units on one Lot or Parcel.
5. “Lot or Parcel” means any legally created unit of land.

6. "Medium City" means each 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.
7. "Middle Housing" means a Duplex as defined in section (4).
8. "Model Code" means the model code developed by the Department contained OAR 660-046-0110(5).
9. "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 local government amends an acknowledged comprehensive plan or a land use regulation to allow Middle Housing, the local government 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 local government 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 local government amends its comprehensive plan or land use regulations to allow Middle Housing, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

#### 660-046-0040 Compliance

1. A local government 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 local government may request from the Department an extension of the time allowed to complete the action in section (1).
3. A Medium City that has not acted by June 30, 2021 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0130(5) in its entirety to all proposed Middle Housing development applications until such time as the Medium City has adopted provisions under section (1).
4. If a Medium City has adopted land use regulations or amended its comprehensive plan by the date provided under section (3) and the 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 City is deemed to have acted. Accordingly, the Medium 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 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 City has not adopted land use regulations or amended its comprehensive plan within 120 days of the date of the remand, the Medium City is deemed not to have acted under section (3).
5. If a Medium City has adopted land use regulations or amended its comprehensive plan by the date provided under section (3) and the Medium 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 city is deemed to have not acted under section (3).
6. If a Medium 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 city shall continue to apply its land use regulations and comprehensive plan as they existed prior to the amendments until the amendments are acknowledged.

7. In the event that a Medium City directly applies the Model Code in accordance with sections (3) and (5), the Model Code completely replaces and pre-empts any provisions of that Medium City's development code that conflict with the Model Code.

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

If a local government was not previously a Medium City and a certified Portland State University Population Research Center population estimate qualifies a city as a Medium City, the city must comply with this division within one year of its qualification as a Medium 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; 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 (5).
5. For the purposes of assisting Medium Cities in adopting reasonable siting and design standards for Duplexes, the Commission adopts the following model Middle Housing code for Medium Cities. The Model Code adopted by reference in this section will be applied to Medium Cities who have not acted to comply with the provisions of ORS 197.758 and this division and completely replaces and pre-empts any provisions of that Medium City's development code that conflict with the Model Code: <hyperlink to Model Code>

### 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 660-008-0015 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 and applying 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 660-008-0015(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 grant 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

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.