

**Date** 12 May 2022

**Project** City of Durham Development Code HB 2001 Amendments

**To** Linda Tate, City Administrator, City of Durham

**From** Marcy McInelly, AIA, Principal, Urbsworks, Inc

# Development code amendments

Commentary is for information only

Proposed new language is double-underlined

Proposed deleted language is ~~stricken~~

## Section 2 –Zoning Districts | Subsection 2.8 Single Dwelling Residential (SDR) District.

### Proposed Text Amendment

### Commentary

## 2 ZONING DISTRICTS

### 2.8 Single Dwelling Residential (SDR) District.

The SDR district allocates land both for large lot detached housing, middle housing, and for attached single dwellings in the form of a Planned Residential Development, including individual or common privately owned open space. The SDR district is intended for those areas where large lot residential development has substantially committed the land for that use.

#### 2.8.1 Uses permitted outright in the SDR district

include:

##### 2.8.1.1 Accessory dwelling unit

The only zone which is affected is the SDR zone, therefore the only amendments to this section are in the SDR subsection.

Middle Housing types will be “uses permitted outright.”

Townhouses will be permitted on lots created through the current land division procedures.

- 2.8.1.2 Home occupation
- 2.8.1.3 Planned Residential Development
- 2.8.1.4 Residential Home
- 2.8.1.5 Single detached residence, including mobile- and manufactured homes<sup>2</sup>
- 2.8.1.6 Middle housing

\*\*\*\*\*

| <b>TABLE 2.18: ZONING DISTRICTS AND USES</b><br>(* = See Supplemental Regulations Chapter 7) |   |
|--|---|
| SDR  | Accessory dwelling unit*  |
| Permitted  | Home occupation*<br><br>Planned Residential Development -<br>Attached and Detached<br><br>Residential Home<br><br>Single unit detached residences,<br>including mobile- and<br>manufactured homes*<br><br><u>Middle housing</u> |

Table 2.18– ZONING DISTRICTS AND USES will be amended to include Middle Housing Types.

**Section 3 – Site and Design Standards | Subsection 3.1 Standard Site Design in Residential Zones**

**Proposed Text Amendment**

**Commentary**

**3.1 Standard Site Design in Residential Zones**

The minimum density for residential development when averaged city-wide shall be maintained at no less than 6 dwelling units per net buildable acre. The minimum base density for the SDR district shall be 10,000 square feet per dwelling. The minimum lot area in the SDR district shall be 10,000 square feet except in a Planned Residential Development. The minimum lot area for townhouses is 1,500 square feet. Townhouses must comply with the supplemental standards in 7.12, and land division for townhouses must comply with provisions in Chapter 8.

\*\*\*\*\*

| TABLE 3.7.1.8: VEHICLE ACCESS<br>REQUIREMENTS IN ZONING DISTRICTS |  |
|---|--|
| <b>SDR <del>DETACHED</del><br/>(NOT PRD)</b>                      | Driveway 10-30 feet wide,<br>fully paved |

\*\*\*\*\*

No change to minimum base density nor minimum lot size; no changes to any of the site and design standards that apply to the SDR.

The minimum lot area remains 10,000 square feet and will continue to apply to all SDR uses currently permitted outright as well as middle housing uses.

Nothing in the PRD section changes.

Provisions of 3.7, On-Site Access and Off-Street Parking, will apply to duplexes, triplexes, and quadplexes. Cottage clusters and townhouses are exempt; instead, they are governed by the parking requirements in supplemental standards of 7.11, Cottage Cluster, and 7.12, Townhouses.

Amend Table 3.7.1.8 to includes middle housing types; strike the word "DETACHED"

Section 3 – Site and Design Standards | Subsection 3.1 Standard Site Design in Residential Zones

Proposed Text Amendment

Commentary

| TABLE 3.7.5: REQUIRED OFF STREET<br>PARKING PER LAND USE                         |                |
|--|----------------|
| Type of Use  | Min/Max Spaces |
| Single Dwelling <u>and</u><br><u>Middle Housing</u> ,<br>Attached or<br>Detached | 1 / No maximum |

Modify parking requirements table (Table 3.7.5) to include middle housing.

**Section 7 –Supplemental Land Use Regulation | Subsection 7.1 Accessory Dwelling Unit and Subsection 7.11 Cottage Cluster (NEW SECTION) and Subsection 7.12 Townhouses (NEW SECTION)**

**Proposed Text Amendment**

**Commentary**

7.1.1 An Accessory Dwelling Unit (ADU) is allowed in a residential district to create new housing units while respecting the appearance and scale of single unit detached residences, to provide additional housing stock with minimal impact on the quality and character of existing neighborhoods, to allow a mix of housing that responds to changing family needs and smaller households, and to foster a more efficient use of existing housing stock and the availability of more affordable housing.

7.1.2 An ADU may be created within or shall share a common wall with the primary residence. A garage may not be converted to an ADU ~~unless replaced with a new garage; all provisions of Section 3.7 must be met. No off-street parking is required for an Accessory Dwelling Unit.~~

7.1.3 An ADU shall not be larger than 33 percent of the habitable area of the primary residence (excludes garage) or 600 square feet, whichever is less.

~~7.1.4 No more than 2 persons shall reside in an ADU at any time and the primary residence or the ADU shall be owner occupied. The City may require the owner of the primary residence to record a deed restriction on the property to that effect.~~

7.1.4 The primary entrance to the ADU shall not be newly constructed on the facade of the primary residence that faces public right of way.

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See attachments A and B for new section text:

7.11 Cottage Cluster (NEW SECTION), and  
7.12 Townhouses (NEW SECTION)

7.1 needs to be amended as follows:  
Accessory dwelling units:

- Strike the requirement for a garage to be replaced if it is converted to an ADU; clarify that an ADU must comply with the requirements of Section 3.7 (On-Site Access and Off-Street Parking).
- Clarify that Oregon State statute does not allow a city to require a parking space for an ADU.
- One way to deal with this is to clarify and cross reference that all applicable parking requirements for the primary dwelling must be met when a garage is converted to an ADU
- Strike 7.1.4; ORS 197.312 does not allow local jurisdictions to require owner-occupancy.

Add the following supplemental land use regulation sections:

7.11 Cottage Cluster  
7.12 Townhouses

| Section 8 –Land Divisions   Subsection 8.9 Middle Housing Expedited Land Division (NEW SECTION)               |   |
|---|---|
| Proposed Text Amendment   | Commentary  |
| <p>See Attachment C for new section text:</p> <p>8.9 Middle Housing Expedited Land Division (NEW SECTION)</p> | <p>Add a new section to comply with requirements to incorporate SB 458 provisions: 8.9 Middle Housing Expedited Land Division</p> |

| Section 10 –Adjustment, Variance, Non-conforming Use, Major Modification   Minor Amendments   |   |
|---|---|
| Proposed Text Amendment   | Commentary  |
| <p>10.5 Major Modification to Existing or Approved Land Use. An application for a major modification of an existing, conforming land use or land use approval is required for <u>the following actions; middle housing is exempt:</u></p> | <p>Add to 10.5 an exemption for middle housing.</p> |

**Section 12 –Definitions | Subsection 12.2 As used in this Code the following words and phrases mean**

| Proposed Text Amendment   | Commentary  |
|---|---|
| <p><u>“Accessory Dwelling Unit (ADU)” means an interior or attached residential structure that is used in connection with, or that is accessory to, a single detached dwelling. The accessory unit functions as a complete, independent living facility with provisions within the unit for a separate kitchen, bathroom and sleeping area.</u></p> <p><u>“Cottage Cluster” means a grouping of no fewer than five detached dwelling units with a footprint of less than 900 square feet each that includes a common courtyard.</u></p> <p><u>“Duplex” means two attached dwelling units on a lot.</u></p> <p><u>“Lot” is a generic term for any unit of land.</u></p> <p><u>“Middle Housing” means Duplexes, Triplexes, Quadplexes, Cottage Clusters, and Townhouses.</u></p> <p><u>“Quadplex” means four attached dwelling units on a lot.</u></p> <p><u>“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 and shares at least one common wall with an adjacent dwelling unit.</u></p> <p><u>“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 any commonly owned property.</u></p> <p><u>“Triplex” means three attached dwelling units on a lot.”</u></p> <p><u>“Middle housing expedited land division” is defined as the partition or subdivision of a lot or parcel on which the development of middle housing is allowed under Section 8.9.</u></p> | <p>Add definitions for:</p> <ul style="list-style-type: none"> <li>· Accessory Dwelling Unit</li> <li>· Cottage cluster</li> <li>· Duplex</li> <li>· Middle housing</li> <li>· Quadplex</li> <li>· Triplex</li> <li>· Middle housing expedited land division</li> </ul> |

**Date** 10 May 2022

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# Attachment A

## 7.11 COTTAGE CLUSTER DESIGN AND DEVELOPMENT STANDARDS (NEW SECTION)

### **7.11 Cottage cluster design and development standards.**

**7.11. 1** Cottage clusters are permitted in the Single Dwelling Residential (SDR) District.

**7.11. 2** Cottage clusters are permitted through a Type I Process.

**7.11. 3** The minimum number of cottages shall be 5 and the maximum number shall be 8.

**7.11. 4** The minimum lot size for a cottage cluster shall be 10,000 square feet. All other Site and Design Standards shall be the same as for the SDR zone, except for building height: The maximum building height for all structures in a cottage cluster is 25 feet.

**7.11. 5** The minimum number of feet between cottages within a cottage cluster shall be 10 feet.

**7.11. 6** No more than one cottage cluster shall be allowed to occupy a single lot.

**7.11. 7** The maximum building footprint for a cottage shall be 900 square feet. The maximum average floor area for a cottage cluster is 1,400 square feet per dwelling unit. Up



to 200 square feet may be exempted in the calculation of dwelling unit footprint for an attached garage or carport.

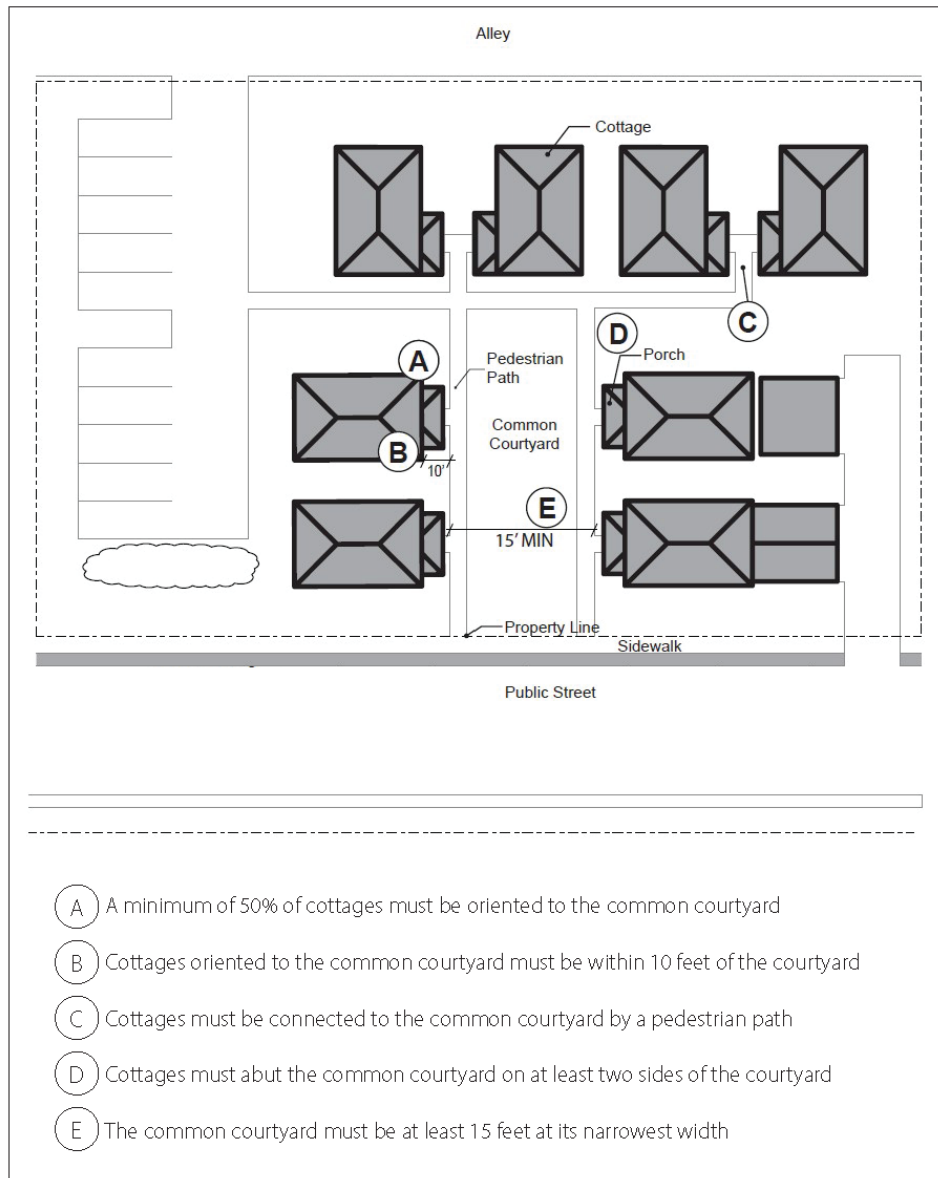
**7.11. 8** Cottage clusters shall be exempt from any lot or parcel coverage or FAR (Floor Area Ratio) limitations.

**7.11. 9** Nothing precludes Cottage Cluster dwelling units on individual lots within the Cottage Cluster development.

**7.11. 10** A preexisting detached single dwelling may remain on a lot with a Cottage Cluster. The preexisting single detached dwelling may be nonconforming with respect to the requirements of the SDR District. The preexisting single detached 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 SDR District may not be expanded. The preexisting single detached dwelling shall count as a unit in the Cottage Cluster, and the floor area of the preexisting single detached dwelling shall not count towards any Cottage Cluster average or Cottage Cluster project average or total unit size limits.

**7.11. 11** The common courtyard must be a single, contiguous piece. Cottages must abut the common courtyard on at least two sides of the courtyard; the common courtyard must contain a minimum of 150 square feet per cottage; the common courtyard must be a minimum of 15 feet wide at its narrowest dimension, and the common courtyard must have frontage on a public street (Figure 7.11.10)

**Figure 7.11.10 – Cottage cluster plan**



**7.11. 12** A minimum of 50 percent of cottages within a cluster must be oriented to the common courtyard and must have a main entrance facing the common courtyard; be within 10 feet from the common courtyard, measured from the façade of the cottage to the

nearest edge of the common courtyard; and be connected to the common courtyard by a pedestrian path.

**7.11. 13** Cottages within 20 feet of a street property line may have their entrances facing the street.

**7.11. 14** Cottages not facing the common courtyard or the street must have their main entrances facing a pedestrian path that is directly connected to the common courtyard.

**7.11. 15** The common courtyard shall be developed with a mix of landscaping, lawn area, pedestrian paths, and/or paved courtyard area, and may also include recreational amenities. Impervious elements of the common courtyard shall not exceed 75 percent of the total common courtyard area.

**7.11. 16** Areas such as utility vaults, perimeter setbacks and common parking areas and driveways do not qualify toward common courtyard area. Common courtyards may contain drainage swales and utilities, provided the area is otherwise usable for open space purposes.

**7.11. 17** Pedestrian paths must be included in a common courtyard. Paths that are contiguous to a courtyard shall count toward the courtyard's minimum dimension and area. Parking areas, required setbacks, and driveways do not qualify as part of a common courtyard.

**7.11. 18** Common courtyard area must be either located within common tracts or subject to a recorded instrument acceptable to the City to ensure the common open space will perpetually benefit all residents of the cottage cluster development.

**7.11. 19** Common open space areas must be constructed and landscaped prior to filing a final plat or, in the case of a site plan, construction and landscaping will be tied to final occupancy of the first cottage.

**7.11. 20** Cottage cluster projects may include community buildings for the shared use of residents that provide space for accessory uses such as community meeting rooms, guest housing, exercise rooms, day care, or community eating areas. Community buildings must meet the following standards: Each cottage cluster is permitted one community building, which shall count towards the maximum average floor area; a community building that meets the development code's definition of a dwelling unit must meet the maximum 900 square foot footprint limitation that applies to cottages, unless a covenant is recorded against the property stating that the structure is not a legal dwelling unit and will not be used as a primary dwelling. Community buildings shall be included in the average floor area calculation for a cottage cluster.

**7.11. 21** Cottages within 20 feet of a street property line must meet any window coverage requirement that applies to detached single family dwellings in the same zone

**7.11. 22** Off-street parking spaces and vehicle maneuvering areas shall not be located within of 20 feet from any street property line, except alley property lines; between a street property line and the front façade of cottages located closest to the street property line. This standard does not apply to alleys.

**7.11. 23** Off-street parking spaces shall not be located within 10 feet of any other property line, except alley property lines. Driveways and drive aisles are permitted within 10 feet of other property lines.

**7.11. 24** Off-street parking may be arranged in clusters, subject to the following standards: Cottage cluster projects with fewer than 8 cottages are permitted parking clusters of not more than 5 contiguous spaces. Parking clusters shall be separated from other spaces by at least 4 feet of landscaping. Clustered parking areas may be covered.

**7.11. 25** Off-street parking may be provided as a garage or carport.

**7.11. 26** Landscaping, fencing, or walls at least three feet tall shall separate clustered parking areas and parking structures from common courtyards and public streets.

**7.11. 27** Garages and carports (whether shared or individual) shall not abut common courtyards.

**7.11. 28** Individual attached garages up to 200 square feet shall be exempted from the calculation of maximum building footprint for cottages; individual detached garages must not exceed 400 square feet in floor area. Garage doors for attached and detached individual garages must not exceed 20 feet in width.

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## Attachment B

### 7.12 TOWNHOUSE DESIGN AND DEVELOPMENT STANDARDS (NEW SECTION)

**7.12. 1** Townhouses are permitted in the Single Dwelling Residential (SDR) District.

**7.12. 2** Approval process. Townhouses are permitted through a Type I Process.

**7.12. 3** New lots or parcels. Creation of new lots or parcels as part of a townhouse project must comply with provisions in Chapter 8.

**7.12. 4** The maximum number of townhouses allowed to be attached shall be 4.

**7.12. 5** The minimum distance between adjacent sets of townhouses shall be 20 feet.

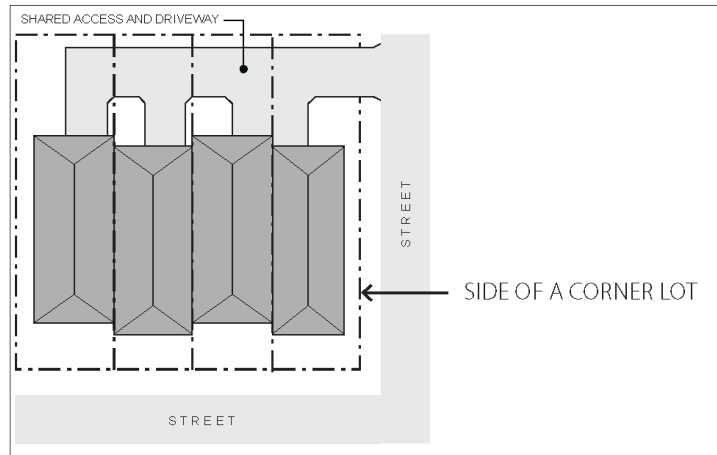
**7.12. 6** The minimum lot size for a townhouse shall be 1,500 square feet. A townhouse project may apply separate minimum lots for internal, external, and corner townhouse lots provided that they average 1,500 square feet, or less.

**7.12. 7** The maximum density for townhouses shall be 18 dwelling units per gross acre.

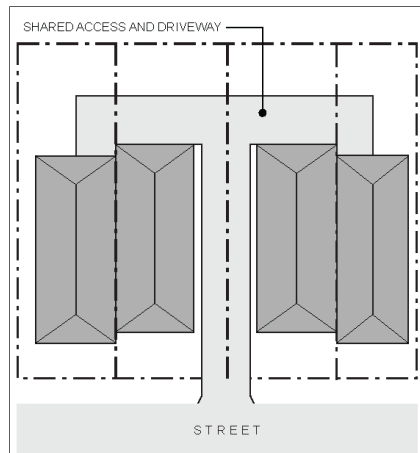
**7.12. 8** All townhouse lots shall meet the same front and rear setbacks as for the SDR District. External and corner lots shall meet the same side setbacks as for the SDR District. Internal side yards shall be zero feet. All other Site and Design Standards shall be the same as for the SDR zone.

**7.12.9** Off-street parking areas shall be accessed on the back façade or located in the rear yard. Garages on the front façade of a townhouse, off-street parking areas in the front yard, and driveway accesses in front of a townhouse are prohibited unless the following standards are met (Figure 7.12.9): Option 1: A townhouse project that includes a corner lot shall take access from a single driveway approach on the side of the corner lot. Option 2: Townhouses share access to the rear of the lot. Option 3: If driveway access is from the front of the lot, driveways shall be paired and there shall be a minimum distance of 24 feet between paired driveways.

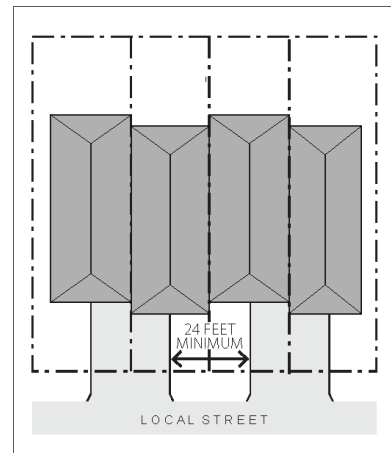
**Figure 7.12.9 – Townhouse off-street parking areas – options**



Option 1) A townhouse project that includes a corner lot shall take access from a single driveway approach on the side of the corner lot



Option 2) Townhouses share access to the rear of the lot



Option 3) If driveway access is from the front of the lot, driveways shall be consolidated and there shall be a minimum distance of 24 feet between paired driveways

**7.12. 10** A townhouse project that includes consolidated access or shared driveways shall grant access easements for all consolidated driveways.



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# Attachment C

## 8.9 MIDDLE HOUSING EXPEDITED LAND DIVISION (NEW SECTION)

### 8.9.1 Purpose and Authority

### 8.9.2 Review Criteria and Standards

### 8.9.3 Procedures

### 8.9.4 Middle Housing Final Plat

## 8.9 Middle housing expedited land division.

**8.9.1.1 Purpose and authority.** The Middle Housing Land Division process supports homeownership by allowing lots with middle housing to divide such that each middle housing dwelling is on its own lot. As used in this section, a “middle housing land division” is the division of a lot or parcel on which the development of middle housing is allowed under ORS 197.758 (2) or (3). A “middle housing expedited land division” includes both a preliminary approval and a final plat and is not a land use decision or a limited land use decision under ORS 197.015.

**8.9.1.2 Applicability.** City may approve a tentative plan for a middle housing land division if the application meets all the requirements of 8.9.2.

**8.9.1.3** City may place additional conditions on a middle housing land division according to 8.9.2.

**8.9.1.4** City will review applications for middle housing land divisions according to submittal requirements and review timeline detailed in 8.9.3.

**8.9.1.5** City will process appeals to middle housing land divisions according to 8.9.3.

**8.9.1.6** The provisions below and cross referenced in this section only apply to middle housing land divisions permitted on or after July 1, 2022.

**8.9.2 Review Criteria and Standards.** The City shall approve a Middle Housing Land Division upon finding:

**8.9.2.1** The parent parcel is developed with Middle Housing or the application for land division is concurrent with a building permit for construction of middle housing on the parcel.

**8.9.2.2** Each resulting middle housing lot or parcel shall contain no more than one dwelling unit except for lots, parcels, or tracts used as common areas. For the purposes of this section, an Accessory Dwelling Unit is not a dwelling unit.

**8.9.2.3** Each lot is served with utilities separately.

**8.9.2.4** All easements necessary for each dwelling unit shall be provided.

Easements shall ensure provision of and access for maintenance and replacement to all utilities; pedestrian access from each dwelling unit to a private or public road; all dedicated driveways, parking, common use areas, shared building elements, and dedicated common area can be accessed and used.

**8.9.2.5** Evidence submitted by the applicant demonstrates buildings or structures on a resulting middle housing lot or parcel will comply with applicable building code provisions relating to new property lines and how buildings or structures located on new lots/parcels will comply with Oregon residential specialty code.

**8.9.2.6** The City shall apply additional conditions to the approval of a tentative plan for a middle housing land division to prohibit the further division of the resulting middle housing lots or parcels, and require that a notation appear on the final plat indicating that approval was given under 8.9 Middle Housing Expedited Land Divisions.

**8.9.2.7** The type of middle housing developed on the parent parcel is not altered by a middle housing expedited land division.

**8.9.2.8** Where the parent parcel abuts the street and dedication or frontage improvements consistent with Section 3.7.3 were not provided when the lot or parcel was created, improvements shall be provided that meet the standards of Section 3.7.3.

**8.9.2.9** The standards of Sections 8.1-8.8 do not apply to the Middle Housing Expedited Land Division.

**8.9.2.10** The City shall not enforce any provision in a recorded instrument affecting real property that is executed on or after August 8, 2019 if the provision would allow the development of a single-family dwelling on the real property but would prohibit the development of, or the partitioning or subdividing of lands according to, the provisions of Section 8.9 of the following:

**8.9.2.10.1** Middle housing, as defined in ORS 197.758 (Development of Middle Housing; Local Regulations); or

**8.9.2.10.2** An accessory dwelling unit allowed under ORS 197.312 (5) (Limitation on City and County Prohibitions – Needed Housing within UGBs).

**8.9.2.11** The City shall not require a final plat before it issues building permits.

**8.9.2.12 Planned Developments and Planned Communities.** For development created through Sections 4.2 and 4.3 (Planned Residential Development) or ORS 94.550-94.783 the following shall apply:

**8.9.2.12.1** Lots or parcels resulting from the division of land in a planned community are subject to the governing documents of the planned community and are allocated assessments and voting right on the same basis as existing units.

**8.9.2.12.2** Judicial partition by division of a lot in a planned community is not allowed unless the declaration expressly allows the division of lots in a planned community; or the lot may be divided under ORS 94.776 (Restrictions on Allowable Maximum Density Prohibited).

**8.9.2.12.3** The lot may be partitioned by sale and divisions of the proceeds under ORS 105.245 (Sale or Partition Ordered by Court).

**8.9.2.12.4** The restrictions noted above do not apply if the homeowners association has removed the property from the provisions of the declaration.

**8.9.3 Procedures.** Unless the applicant requests to use the procedures in 8.1-8.8, the following procedure for Middle Housing Expedited Land Division shall be available.

**8.9.3.1 Pre-Application Conference.** A pre-application conference is not required.

**8.9.3.2** Neighborhood Meeting. A neighborhood meeting is not required.

**8.9.3.3 Application Requirements.** Applications for development permits shall be submitted upon forms established by the City. Applications will not be accepted in partial submittals. All of the following items must be submitted to initiate the completeness review:

**8.9.3.3.1** Application form, including required notarized signature(s) that demonstrate consent of all owners of the affected property;

**8.9.3.3.2** Deed, title report or other proof of ownership;

**8.9.3.3.3** Information addressing the criteria of Section 8.9.2 in sufficient detail for review and action;

**8.9.3.3.4** Plans required for the particular type of application as noted by staff on the application checklist;

**8.9.3.3.5** Application narrative to address applicable code approval criteria and standards as noted on the completed application checklist; and

**8.9.3.3.6** Payment of the required fee.

**8.9.3.4 Completeness review.** The City shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within twenty-one (21) calendar days after the city receives the application submittal.

**8.9.3.4.1** Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required information listed in the checklist and shall not be based on differences of opinion as to quality or accuracy. Determination that an application is

complete indicates only that the application contains the information necessary for a qualitative review of compliance with the Development Code standards.

**8.9.3.4.2** If the application was complete when first submitted or the applicant submits the additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.

**8.9.3.4.3** If an application is incomplete, the completeness notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, designed to be returned to the City by the applicant, indicating whether or not the applicant intends to amend or supplement the application.

**8.9.3.4.4** If an application is incomplete, the completeness notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, designed to be returned to the City by the applicant, indicating whether or not the applicant intends to amend or supplement the application.

**8.9.3.5 Notification.** The City shall provide written notice of the receipt of the completed application for a middle housing expedited land division to the applicant and/or authorized representative; and the owner(s) of record of the subject property; and any City-recognized neighborhood association whose boundaries include or are within one hundred (100) feet of the subject property; and owners of record within one hundred (100) feet of the

perimeter of the subject property and affected city departments, governmental agency, or special district responsible for providing public facilities or services which is entitled to notice under an intergovernmental agreement with the City which includes provision for such notice or is otherwise entitled to such notice.

**8.9.3.5.1** The notice shall state the street address or other easily understood geographical reference to the subject property; a time and place where copies of all evidence submitted by the applicant will be available for review; by commonly used citation, the applicable criteria for the decision; the name and telephone number of a local government contact person; a brief summary of the local decision-making process for the Middle Housing Expedited Land Division.

**8.9.3.5.2** The notice shall state that the issues that may provide the basis for an appeal to the hearings officer must be raised in writing prior to the expiration of the comment period; that the issues must be raised with sufficient specificity to enable the local government to respond to the issue, and the place, date and time that comments are due.

**8.9.3.5.3** For purposes of appeal to the hearings officer under ORS 197.375 (Appeal of Local Government to Referee; Court of Appeals), this requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given.

**8.9.3.5.4** After notification according to the procedure set out above, the City shall provide a 14-day period for submission of written comments prior to the decision.

**8.9.3.6 Decision.** The City shall make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the substantive requirements of Section 8.9.2.

**8.9.3.6.1** Approval may include conditions to ensure that the application meets the applicable land use regulations.

**8.9.3.6.2** For applications subject to Section 8.9, the City shall not hold a hearing on the application; and shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination.

**8.9.3.6.3** The decision shall include a statement of the facts upon which the decision authority relied to determine whether the application satisfied or failed to satisfy each applicable approval.

**8.9.3.6.4** Notice of the decision shall be provided to the applicant and to those who received notice under subsection (1) of this section within sixty-three (63) days of the date of a completed application. The notice of decision shall include the summary statement described in (4)(b) of this subsection; and an explanation of appeal rights under ORS 197.375 (Appeal of decision on application for expedited land division).

**8.9.3.7 Appeals.** An appeal of a decision made under this section shall be made as follows:

**8.9.3.7.1** An appeal must be filed within fourteen (14) days of mailing of the notice of the decision and be accompanied by the applicable deposit for costs.



**8.9.3.7.2** A decision may be appealed by the applicant; or any person or organization who filed written comments within the 14-day comment period.

**8.9.3.7.3** An appeal shall be based solely on allegations of violation of the substantive provisions of the applicable land use regulations; of unconstitutionality of the decision; that the application is not eligible for review under 6.0500 or ORS 197.360 to 197.380 and should be reviewed as a land use decision or limited land use decision; or that the parties' substantive rights have been substantially prejudiced by an error in procedure.

**8.9.3.7.4** The local government shall designate the hearings officer as the referee for appeals of a decision made under this section and ORS 197.360 and 197.365.

**8.9.3.7.5** Within seven days of receiving the appeal, the City, on behalf of the hearings officer, shall notify the applicant, the appellant if other than the applicant, any person or organization entitled to notice under Section 8.9.3.5 that provided written comments to the local government and all providers of public facilities and services entitled to notice under Section 8.9.3.5 and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The hearings officer may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. The hearings officer shall provide the local government an opportunity to explain its decision but is not limited to reviewing the local government decision and may consider information not presented to the local government.

**8.9.3.7.6** The hearings officer shall apply the substantive requirements of Section 8.9.2 and ORS 197.360. If the hearings officer determines that the application does not qualify as an expedited land division [as described in ORS 197.360] or a middle housing land division, as defined in Section 8.9.1.1, the hearings officer shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements.

**8.9.3.7.7** The hearings officer shall not reduce the density of the land division application.

**8.9.3.8** The hearings officer shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the land use regulations, within 42 days of the filing of an appeal. The hearings officer shall not remand the application to the local government for any reason other than as set forth in this subsection.

**8.9.3.9** Unless the City Council finds exigent circumstances, a hearings officer who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as hearings officer in the appeal.

**8.9.3.10** Notwithstanding any other provision of law, the hearings officer shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The hearings officer shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, including the deposit paid under this section, against an appellant who does not

materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the hearings officer and costs incurred by the local government, but not the costs of other parties.

**8.9.3.11** The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions or actions made under ORS 197.360 to 197.380 (Expedited and Middle Housing Expedited Land Divisions) or 8.9.1.2.

**8.9.3.12** Any party to a proceeding before a hearings officer under this section may seek judicial review of the hearings officer's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the hearings officer in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:

**8.9.3.13** That the decision does not concern an expedited land division as described in ORS 197.360 or middle housing land division as defined in section 2 of this 2021 Act and the appellant raised this issue in proceedings before the hearings officer;

**8.9.3.14** That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or

**8.9.3.15** That the decision is unconstitutional.

**8.9.3.1**      **Expiration.** The tentative approval of a Middle Housing Expedited Land Division is void if a final plat is not recorded within three years of the tentative approval.

**8.9.4**            **Middle Housing Final Plat.** The final plat shall comply with the Middle Housing Preliminary Plan conditions of approval.

**8.9.4.1**            The following data requirements, if applicable, shall also be shown on the final plat.

**8.9.4.1.1**        All tracts of land intended to be deeded or dedicated for public use.

**8.9.4.2**            **Approval Criteria.** The City shall approve or deny the final plat for the Middle Housing Land Division. Approval shall be based on the following criteria: Lands to be deeded or dedicated for public use are provided for on the final plat or on separate documents; an approved guarantee of completion for required public improvements that have not been completed and accepted by the City; an approved grading and drainage plan if grading is required; approved construction drawings for required public improvements, and all conditions of tentative middle housing land division approval have been met and the final plat substantially conforms to the provisions of the approved tentative middle housing land division.

**8.9.4.3**            **Recordation.** Following review and City's approval of a final partition plat, the applicant shall take the following actions:

**8.9.4.3.1** Obtain the approval signature on the final Middle Housing Land Division plat by the County Surveyor certifying that the final partition plat complies with all applicable survey laws. Before certifying, the surveyor may make field investigations to verify that the plat survey is sufficiently accurate. If the surveyor determines that the plat does not comply, the applicant shall make corrections. When the surveyor determines that the plat conforms, the surveyor shall sign and date the plat.

**8.9.4.3.2** A Notice of Middle Housing Land Division for each middle housing lot shall be recorded with the county recorder that states:

**8.9.4.3.3** The middle housing lot may not be further divided.

**8.9.4.3.4** No more than one unit of middle housing may be developed on each middle housing lot.

**8.9.4.3.5** The dwelling developed on the middle housing lot is a unit of middle housing and is not a single attached or detached dwelling, or any other housing type.

**8.9.4.3.6** File a statement of water right and, if a water right is appurtenant, a copy of the acknowledgment from the Water Resources Department.

**8.9.4.3.7** Deliver the approved final partition plat and accompanying documents to the county recorder for recording.

**8.9.4.3.8** Return a copy of the recorded Notices of Middle Housing Land Division to the City for filing.

**Date** 04 April 2022

**Project** City of Durham Development Code HB 2001 Amendments

**To** Linda Tate, City Administrator, City of Durham

**From** Keith Liden, AICP

# Task 3: Draft Comprehensive Plan Amendments

Commentary is for information only

Proposed new language is double-underlined

Proposed ~~deleted~~ language is ~~stricken~~

## Section – Growth and Development Findings 2. Housing Needs

### Proposed Text Amendment

### Commentary

## 2 Housing Needs

### 2.E Metropolitan Housing Rule.

The City has attempted to provide for housing affordability and diversity through the following actions:

- . Provide for both single-family and multiple family housing alternatives;
- . Within designated single-family residential areas, provide for a diversity of permitted lot sizes;
- . Within designated single-family residential areas, also provide adequate incentives for clustering of housing units into townhouses, zero lot line

The purpose of the Metropolitan Housing rule (Oregon Administrative Rules, Chapter 660, Division 7) is to ensure opportunity for efficiently providing needed housing in the Portland (Metro) UGB. Several additions to the existing Plan text is recommended to be consistent with the rule.

houses, and small lot sizes;

. Allow accessory dwelling units in detached single-family dwellings.

Apply clear and objective approval standards to residential development.

Provide for a minimum overall density of 6 units per net buildable acre.