

HB2001 Implementation Fact Sheet #1 – Basic Definitions

Version 1.1 18-Feb-2021 (Disambiguating types of residential use)

Future versions will address at least the following:

- “Design Standard”
- “Lot or Parcel”
- “Siting Standard”
- “Sufficient Infrastructure”
- “Zone for Residential Use”

Introduction

The DLCDC “Middle Housing” rules and “Model Code” are rife with inconsistencies, ambiguities, omissions and overreach.

The City of Eugene must resolve the rules in a manner that is clear, objective, comprehensible, reasonable and fair.

This is the first in a series of “Fact Sheets” to assist the Planning Commission and City Council in that endeavor.

DLCD Rules

These Fact Sheets provide excerpted sections of the DLCDC rules relevant to the covered topic. Below are the DLCDC definitions. The ones covered in this Fact Sheet include numbers 2, 5, 6, 14, 17, 18 and 19. Additional terms are recommended to provide clarity and avoid ambiguities within the proposed Eugene Code amendments.

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. a. Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces;
 - b. b. Goal 6 Air, Water and Land Resource Quality;
 - c. c. Goal 7 Areas Subject to Natural Hazards;
 - d. d. Goal 9 Economic Development;
 - e. e. Goal 15 Willamette River Greenway;
 - f. f. Goal 16 Estuarine Resources;
 - g. g. Goal 17 Coastal Shorelands; and
 - h. 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.
 - a. Connection to a public water system capable of meeting established service levels.
 - b. Access via public or private streets meeting adopted emergency vehicle access standards to a city's public street system.

- c. 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.

Relevant ORS 197.015 definitions

- (3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.
- (22) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

ORS 197.758 is the statute created by HB 2001 and has definitions consistent with the OAR.

Model Code Provisions

- 9. "Duplex" means two dwelling units on a lot or parcel in any configuration. In instances where a development can meet the definition of a duplex and also meets the definition of a primary dwelling unit with an accessory dwelling unit (ADU), the applicant shall specify at the time of application review whether the development is considered a duplex or a primary dwelling unit with an ADU. See Figure 3 through Figure 8 in Section E for examples of possible duplex configurations.

Comments

Note: The OAR definitions create potential overlap by which a particular proposal for residential might fall in more than one category, e.g., Duplex and Rowhouse.

The definitions also have to deal with the ambiguity of "Accessory Dwelling Unit," which is described in ORS 197.312:

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.

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

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

The internal conflicts include that an ADU is allowed only "for each detached single-family dwelling," but:

- a) If the ADU is a second detached (single) dwelling, then is it now allowed its own an ADU?

- b) Because a “detached single-family dwelling” must exist before, or at least as part of a development that includes both the “primary” detached single-family dwelling and ADU, neither a duplex structure, nor an attached or interior ADU could be developed on a vacant lot, with one of the dwellings designated as an ADU. Instead, at some point in time before a permit can be issued for an ADU, the “detached single-family dwelling” must legally exist, presumably having gotten a certificate of occupancy.

The addition of “Cottage Cluster exacerbates the complexities. Is every detached dwelling in the cluster allowed its own ADU?

The definitions below attempt to resolve these internal conflicts reasonably by:

- a) Allowing one dwelling in a Duplex to be irrevocably designated as the “ADU” (the apparent statutory language notwithstanding)
- b) Placing no criteria other than owner designation to determine whether one of two dwellings is an “ADU.”
- c) Prohibiting any ADU in a “Cottage Cluster.” (the apparent statutory language notwithstanding)

The provision in (b) prevents an existing development with a designated “ADU” from being converted to a “Cottage Cluster,” which is not unreasonable.

These proposed code definitions should be considered “tentative” and carefully reviewed and improved to ensure that there are no gaps or unintended overlaps. Note that the language is challenging for ADUs and plexes because of the many potential configurations or two or more dwellings. In essence, the definitions should require that a duplex, triplex and quadplex are all “within the same structure”; however, that’s not an adequate clear-and-objective standard.

Similarly, the definition of ADU must ensure that an owner must irrevocably declare that a dwelling is an ADU prevent a “bait-and-switch” means of developing and ADU and then treating it as a non-ADU that is a “single-family, detached” dwelling or part of a “middle housing” type.

Proposed code definitions

Dwelling Type Definitions

“Detached Dwelling” – A dwelling that is the only dwelling in a structure and that shares no common wall or ceiling with any other dwelling.

“Interior Dwelling” – One of two or more dwellings in a structure, where either of the following are present:

- a) At least 80 contiguous square feet of the one of the two dwellings is directly above the ceiling of the other dwelling; or
- b) One of the two dwellings is accessible only by means of the other dwelling’s entry(ies).

“Attached Dwelling” – One of two or more dwellings in a structure, where the dwelling is not an “Interior Dwelling” and shares at least 80 contiguous square feet of the same interior wall as another

dwelling and where both dwellings sharing the interior wall have separate entrances and no access between the two dwellings.

“Connected Dwelling” – A dwelling that is neither a Detached Dwelling, nor an Interior Dwelling, nor an Attached Dwelling.

Residential Use Definitions

1. “Single-Dwelling” – One Detached Dwelling on a lot that is not part of a Cottage Cluster
2. “Dwelling Pair” – Two Detached Dwellings or two Connected Dwellings on a lot, in which neither dwelling is part of a Cottage Cluster.
3. “Duplex” – Two Interior Dwellings or two Attached Dwellings a single lot that do not share any common wall or ceiling with any other dwelling.
4. “Accessory Dwelling Unit” (“ADU”) – One of the two dwellings in either a “Dwelling Pair” or a “Duplex,” for which an owner has recorded an irrevocable declaration that the dwelling is an ADU.
5. “Triplex” – Three dwellings, each of which is either an Interior Dwelling or an Attached Dwelling.
6. “Quadplex” – Four Attached Dwellings, each of which is either an Interior Dwelling or an Attached Dwelling.
7. “Townhouse” – A dwelling in a Townhouse Building.
8. “Townhouse Structure” – Two to four Attached Dwellings, each on a separate lot.
9. “Townhouse Project” – One or more Townhouse Structures that share no common wall.
10. “Cottage Cluster” – Four to eight Detached Dwellings and/or Connected Dwellings on a lot or on a single, multi-lot development site, in which none of the dwellings are an ADU.