



PLANNING COMMISSION WORK SESSION AGENDA

Monday, August 12, 2019 - 6:00 PM

City Hall, Conference Room A, 169 SW Coast Hwy, Newport, OR 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER

2. UNFINISHED BUSINESS

2.A Continued Review of the Framework for a New Tsunami Hazard Overlay Zone.

[Staff Memorandum.pdf](#)

[Draft Comprehensive Plan and Zoning Ordinance Amendments.pdf](#)

[Tsunami Hazards Overlay Map - Agate.pdf](#)

[Tsunami Hazards Overlay Map - Airport.pdf](#)

[Tsunami Hazards Overlay Map - Central.pdf](#)

[Tsunami Hazards Overlay Map - South Beach.pdf](#)

3. NEW BUSINESS

3.A Amendments to NMC Section 14.16.050, Development Standards for Accessory Dwelling Units.


[Staff Memorandum.pdf](#)

[Section 14.16.050 Amendment Mark-Ups.pdf](#)
[HB 2001 Enrolled \(2019\).pdf](#)
[DLCD Guidance Document.pdf](#)

3.B Updated Planning Commission Work Program.
[PC Work Program 8-8-19.pdf](#)

4. ADJOURNMENT

Memorandum

To: Planning Commission/Commission Advisory Committee
From: Derrick I. Tokos, AICP, Community Development Director 
Date: August 8, 2019
Re: Draft Comprehensive Plan and Zoning Ordinance Amendments Establishing a Tsunami Hazard Overlay Zone

At a July 8, 2019 work session, the Planning Commission discussed a conceptual framework for establishing a tsunami hazard overlay zone. Based upon feedback received at that meeting, staff has put together a package of specific revisions for the Commission's consideration. Items for discussion have been highlighted in red within the draft code document. These include consideration of a required tsunami hazard acknowledgment and disclosure statement, revised definitions for schools and child care centers, consideration of which uses to exclude from various tsunami inundation scenarios and which inundation scenarios are appropriate to use, and whether or not the City should proceed with development of a Tsunami Evacuation Facilities Improvement Plan.

Staff have created a series of reference maps showing DOGAMI's M,L and XXL tsunami inundation scenarios for the full extent of Newport along with critical facilities, assembly areas and child care facilities. With the exception of the Nye Beach Montessori school, which is within the XXL tsunami inundation zone, all other of these facilities are entirely outside of all tsunami inundation zones.

Staff will provide more information on the location of other uses as well as a Google Earth model of the tsunami inundation scenarios on the overhead projector at Monday's work session.

Attachments

Draft Comprehensive Plan and Zoning Ordinance Amendments
Tsunami Inundation Area Reference Maps

[DLCD MODEL CODE] City of Newport – Tsunami Land Use Project: Land Use Provisions
Aug 12, 2019 Review

Part 1: Comprehensive Plan Provisions

**Red text indicates staff recommended additions and/or discussion items for PC. Blue text indicates notes from DLCD staff.*

Goal 7: Areas Subject to Natural Hazards

General Policies

To protect life, minimize damage and facilitate rapid recovery from a local source Cascadia Subduction Zone earthquake and tsunami, the City will:

1. Support tsunami preparedness and related resilience efforts.
2. Take reasonable measures to protect life and property to the fullest extent feasible, from the impact of a local source Cascadia tsunami.
3. Use the Oregon Department of Geology and Mineral Industries (DOGAMI) Tsunami Inundation Maps applicable to Newport to develop tsunami hazard resiliency measures.
4. Adopt a Tsunami Hazard Overlay Zone for identified tsunami hazard areas to implement land use measures addressing tsunami risk.
5. Enact design or performance implementing code components in identified tsunami hazard areas.
6. Consider potential land subsidence projections to plan for post Cascadia event earthquake and tsunami redevelopment.
7. **Require a tsunami hazard acknowledgement and disclosure statement for new development in tsunami hazard areas (Example below from North Bend).**

18.50.100 Hazard Acknowledgement and Disclosure Statement.

All applications for new development or substantial improvements in the Tsunami Hazard Overlay Zone shall be accompanied by a Hazard Acknowledgement and Disclosure Statement, executed by the property owner, which sets forth the following:

- (1) A statement that the property is subject to inundation by a local source Cascadia event tsunami, including the DOGAMI scenarios (S, M, L, XL, or XXL) that could potentially flood the site, and that development thereon is subject to risk of damage from tsunami;
- (2) A statement that a local source tsunami poses a potential life safety threat to occupants of the property, and that the protection of life safety will require occupants to evacuate to high ground in the event of a local source tsunami; and
- (3) A statement acknowledging that the property owner accepts and assumes all risks of damage from tsunami associated with the development of the subject property.
- (4) A statement that North Bend, its agents and employees are released from any and all claims which may arise as a result of damages, losses, or injuries sustained by the property owner and his/her heirs, successors and assigns from local tsunami hazards affecting the subject property.

8. Identify and secure the use of appropriate land above a tsunami inundation zone for public purposes post event

**[DLCD MODEL CODE] City of Newport – Tsunami Land Use Project: Land Use Provisions
Aug 12, 2019 Review**

9. As part of a comprehensive pre-disaster land use planning effort, consistent with applicable statewide planning goals, identify appropriate locations above the tsunami inundation for relocation of housing, business and community functions post event.
10. Require needed evacuation route improvements, including improvements to route demarcation (wayfinding in all weather and lighting conditions) and vegetation management, for new development and substantial redevelopment in tsunami hazard areas, in accordance with the Lincoln County Natural Hazards Mitigation Plan

Evacuation Policy Concepts

To facilitate the orderly and expedient evacuation of residents and visitors in a tsunami event, the City will:

1. Provide for the development of vertical evacuation structures in areas where reaching high ground is impractical.
2. Evaluate multi-use paths and transportation policies for tsunami evacuation route planning.
3. Install signs to clearly mark evacuation routes and implement other way finding technologies (e.g. painting on pavement, power poles and other prominent features) to ensure that routes can be easily followed day or night and in all weather conditions.
4. Prepare informational materials related to tsunami evacuation routes and make them easily available to the public.

Goal 12: Transportation

The City will:

1. Develop multi-use paths that both enhance community livability and serve as tsunami evacuation routes.
2. Coordinate evacuation route and signage planning in conjunction with existing or proposed transportation system plan pedestrian and bicycle route planning efforts.

Part 2: Draft Tsunami Hazard Overlay Zone

The Tsunami Hazard Overlay zone is designed to serve as the principal implementation mechanism for land use measures addressing tsunami risk. As the name indicates, it is designed to be applied in the form of an overlay zone, i.e. in combination with underlying base zones. The boundaries of the overlay would correspond to the area of the jurisdiction subject to inundation from a local source tsunami as indicated in Section 4.1.2 below. In form and application, it is similar to the flood hazard overlay zones in place in most jurisdictions. *In general, most of the individual sections of the overlay zone are “severable,” that is they can be used on an individual basis, or in any combination, when being adapted for use in a community’s land use code.*

**[DLCD MODEL CODE] City of Newport – Tsunami Land Use Project: Land Use Provisions
Aug 12, 2019 Review**

4.1.1 Tsunami Hazard (TH) Overlay Zone

1.100 Definitions for Section 1.110

As used in Section 1.110:

1. "Child Care Center" means a child care facility that is certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling. (ORS 414-300-0005)
2. "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 329A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children. (ORS 414-300-0005)
3. "Essential Facilities" means:
 - a. Hospitals and other medical facilities having surgery and emergency treatment areas;
 - b. Fire and police stations;
 - c. Tanks or other structures containing, housing or supporting water or fire- suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
 - d. Emergency vehicle shelters and garages;
 - e. Structures and equipment in emergency preparedness centers; and
 - f. Standby power generating equipment for essential facilities.
4. "Hazardous facility" means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released.
5. "School" means a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof (from ORS 433.235) .
6. "Special occupancy structures" means
 - a. Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;
 - ~~b. Buildings with a capacity of greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;~~
 - c. Schools with a capacity of greater than 250 individuals;
 - d. Child care centers;
 - e. Buildings for colleges or adult education schools with a capacity of greater than 500 persons;
 - f. Medical facilities with 50 or more resident, incapacitated persons not included in

- subsection (a) through (c) of this paragraph;
- g. Jails and detention facilities; and
 - h. All structures and occupancies with a capacity of greater than 5,000 persons.
7. “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which exceeds 50 percent of the real market value of the structure.
8. “Tsunami vertical evacuation structure” means a building or constructed earthen mound that is accessible to evacuees, has sufficient height to place evacuees above the level of tsunami inundation, and is designed and constructed with the strength and resiliency needed to withstand the effects of tsunami waves.
9. “Tsunami Inundation Maps (TIMs)” means the map, or maps in the DOGAMI Tsunami Inundation Map (TIM) Series, published by the Oregon Department of Geology and Mineral Industries, which cover(s) the area *within the [City of Newport](#)*.

4.1.2 Tsunami Hazard Overlay Zone

1. Purpose. The purpose of the Tsunami Hazard Overlay Zone is to increase the resilience of the community to a local source (Cascadia Subduction Zone) tsunami by establishing standards, requirements, incentives, and other measures to be applied in the review and authorization of land use and development activities in areas subject to tsunami hazards. The standards established by this section are intended to limit, direct and encourage the development of land uses within areas subject to tsunami hazards in a manner that will:
- a. Reduce loss of life;
 - b. Reduce damage to private and public property;
 - c. Reduce social, emotional, and economic disruptions; and
 - d. Increase the ability of the community to respond and recover.

Significant public and private investment has been made in development in areas which are now known to be subject to tsunami hazards. It is not the intent or purpose of this section to require the relocation of or otherwise regulate existing development within the Tsunami Hazard Overlay Zone. However, it is the intent of this section to control, direct and encourage new development and redevelopment such that, over time, the community’s exposure to tsunami risk will be reduced.

2. Applicability of Tsunami Hazard Overlay Zone. All lands identified as subject to inundation from the [XXL] magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section.

[DLCD MODEL CODE] City of Newport – Tsunami Land Use Project: Land Use Provisions
Aug 12, 2019 Review

Note: The overlay zone should include all of the area subject to inundation by the highest local source tsunami event, XXL, depicted on the DOGAMI TIMs. By using the limits of the XXL event, all of the area subject to tsunami risk will be included. However, the regulatory and other standards may be applied differentially within the overlay, based on the different levels of risk for the five modeled events, the purpose of the standard, and overall community objectives.

- 3. Uses. In the Tsunami Hazard Overlay Zone, except for the prohibited uses set forth in subsection (4), all uses permitted pursuant to the provisions of the underlying zone may be permitted, subject to the additional requirements and limitations of this section.
- 4. Prohibited Uses. Unless authorized in accordance with subsection (5), the following uses are prohibited in the specified portions of the Tsunami Hazard Overlay Zone:

Note: Under ORS 455.446, the uses listed in subsection (a) are prohibited within the tsunami inundation zone as adopted by the DOGAMI governing board, currently the Tsunami Regulatory Maps or "SB 379 Maps." The governing board is reconsidering the limit of the prohibition area and may choose the "L" local source event as the regulatory area in the future. Based on individual circumstances and overall risk to the community, local governments may consider establishing further limits on uses based on the need to reduce exposure to tsunami risk. This could include extending the prohibition to include other important and/or high risk uses, expanding the area subject to the prohibition by specifying a larger (e.g. XXL) design event, or some combination of these methods. The provisions of subsection (b) provide one example of an approach to extending use limitations beyond the minimum prohibitions of ORS 455.446. In any case, use prohibitions and/or limitations beyond the minimum requirements of ORS 455.446 should be based on the risk tolerance, overall exposure to risk, and individual needs of the community.

- a. In areas identified as subject to inundation from the [XXL] magnitude local source tsunami event as set forth on the Tsunami Inundation Map (TIM), the following uses are prohibited:
 - i. Hospitals and other medical facilities having surgery and emergency treatment areas.
 - ii. Fire and police stations.
 - iii. Structures and equipment in government communication centers and other facilities required for emergency response.
 - ~~iv. Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers.~~
 - v. Schools with a capacity of greater than 250 individuals.
 - vi. Child care centers.
 - vii. Buildings for colleges or adult education schools with a capacity of greater than 500 persons.

- viii. Jails and detention facilities.
 - b. In areas identified as subject to inundation from the [*choose design event; recommend "M"*] magnitude local source tsunami event as set forth on the Tsunami Inundation Map (TIM), the following uses are prohibited:
 - i. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures.
 - ii. Emergency vehicle shelters and garages.
 - iii. Structures and equipment in emergency preparedness centers.
 - iv. Standby power generating equipment for essential facilities.
 - v. *Covered structures whose primary occupancy is public assembly with a capacity of greater than 300 persons.*
 - vi. Medical facilities with 50 or more resident, incapacitated patients.
 - ~~vii. Residential uses, including manufactured home parks, of a density exceeding 10 units per acre. (Max density in R-1 zones is 5.8 units per acre and in R-3 and R-4 zones is 34.8 units/acre)~~
 - ~~viii. Hotels or motels with more than 50 units.~~
 - c. *The provisions of this section do not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas.*
5. Use Exceptions. A use listed in subsection (4) of this section may be permitted upon authorization of a Use Exception in accordance with the following requirements:
- a. Public schools may be permitted upon findings that there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.
 - b. Fire or police stations may be permitted upon findings that there is a need for a strategic location.
 - c. *Uses otherwise prohibited, such as child care centers, are [allowed]/[prohibited] when accessory to a permitted use.*
 - d. Other uses prohibited by subsection (4) of this section may be permitted upon the following findings:
 - i. There are no reasonable, lower-risk alternative sites available for the proposed use;
 - ii. Adequate evacuation measures will be provided such that life safety risk to building occupants is minimized; and,
 - iii. The buildings will be designed and constructed in a manner to minimize the risk of structural failure during the design earthquake and tsunami event.
 - e. Applications, review, decisions, and appeals for Use Exceptions authorized by this

[DLCD MODEL CODE] City of Newport – Tsunami Land Use Project: Land Use Provisions
Aug 12, 2019 Review

subsection shall be in accordance with the requirements for a Type III procedure as set forth in Section [cite administrative/procedural section of code].

- 6. **Evacuation Route Improvement Requirements.** Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan, or Transportation System Plan. Such measures shall include:

*Note: The following provisions are largely dependent upon an adopted **Tsunami Evacuation Facilities Improvement Plan (TEFIP)** that identifies evacuation needs, designates routes, establishes system standards, and identifies needed improvements to the local evacuation system. Such a plan is essential to the implementation of evacuation route development/improvement in conjunction with the land use review and approval process. Every jurisdiction is urged to develop such a plan as a tool to enhance the development of evacuation infrastructure. Please see Chapter 6 of the [Tsunami Land Use Guide](#) for detailed guidance on the development of a TEFIP.*

a. **On-site improvements:**

- i. Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Tsunami Evacuation Facilities Improvement Plan in all weather and lighting conditions.
- ii. Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.

iii. *Reedsport and North Bend have some examples of more specific required improvements like info brochures and wayfinding signage that Newport may want to consider (Reedsport Example):*

- a. Informational bulletins, brochures and other forms of communication posted in public areas, meeting rooms or common areas alerting residents, visitors and guest to the threat of Tsunami and nearby evacuation routes and assembly areas.
- b. Wayfinding signage shall be posted in parking areas and pedestrian ways indicating the direction and location of the closest evacuation route and

iv. Where identified in the Tsunami Evacuation Facilities Improvement Plan as the only practicable means of evacuation, vertical evacuation structure(s) of sufficient

[DLCD MODEL CODE] City of Newport – Tsunami Land Use Project: Land Use Provisions
Aug 12, 2019 Review







capacity to accommodate the evacuation needs of the proposed development.

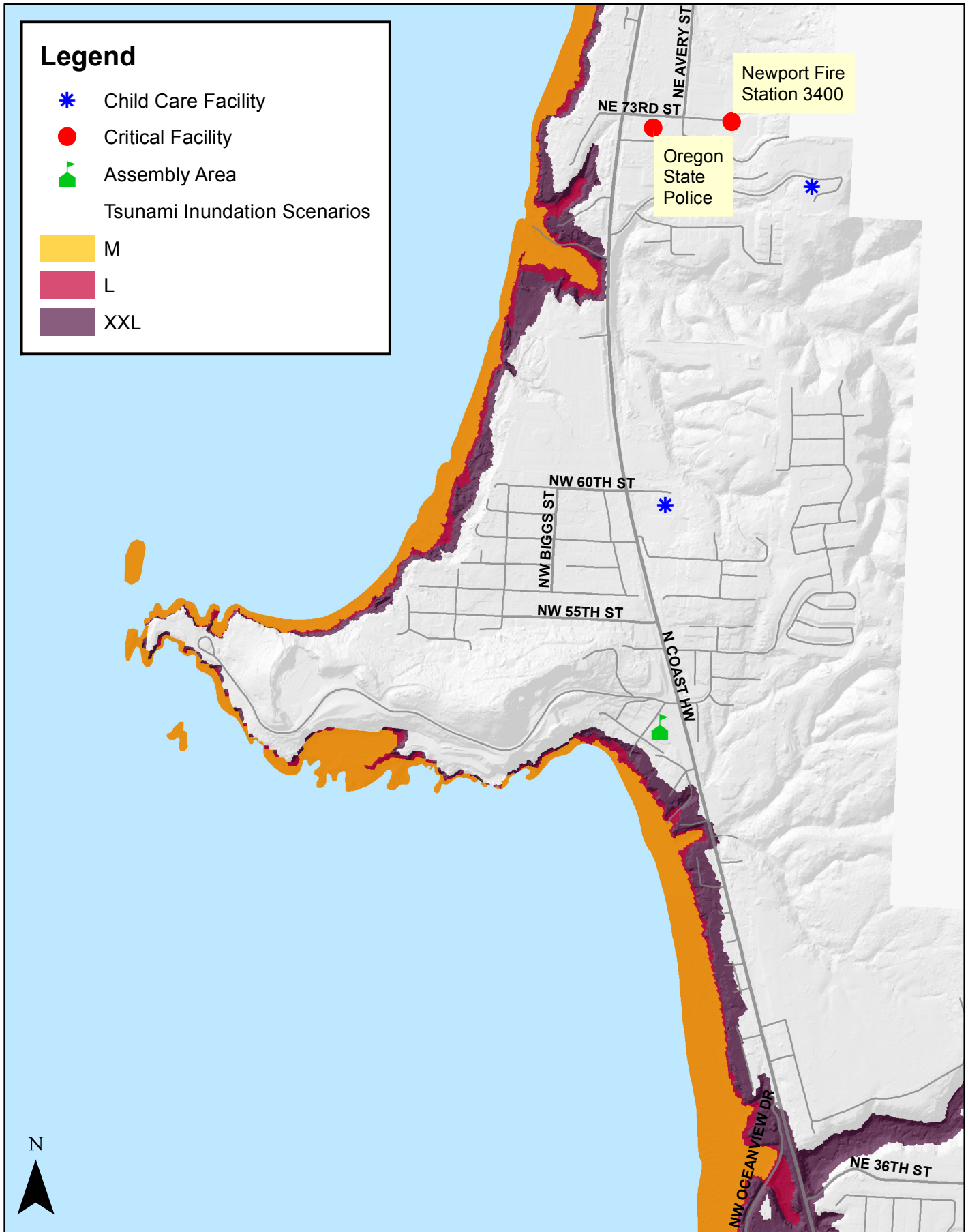
- b. Evacuation route signage consistent with the standards set forth in the Tsunami Evacuation Facilities Improvement Plan. Such signage shall be adequate to provide necessary evacuation information consistent with the proposed use of the site.
- c. Evacuation route improvements and measures required by this subsection shall include, at a minimum, the following:
 - i. Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions;
 - ii. Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake; and
 - iii. Such other improvements and measures identified in the Tsunami Evacuation Facilities Improvement Plan.
- ~~d. When it is determined that improvements required by this subsection cannot be practicably accomplished at the time of development approval, payment in lieu of identified improvements shall be provided in accordance with [cite applicable section of code establishing standards and requirements for payment in lieu].~~

7. Vertical Evacuation Structures

- a. All vertical evacuation structures shall be of sufficient height to place evacuees above the level of inundation for the XXL local source tsunami event.

Legend

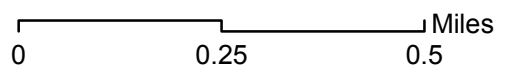
-  Child Care Facility
-  Critical Facility
-  Assembly Area
- Tsunami Inundation Scenarios
-  M
-  L
-  XXL



City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 Phone: 1.541.574.0629
 Fax: 1.541.574.0644







North Newport Critical Facilities and Tsunami Inundation Scenarios

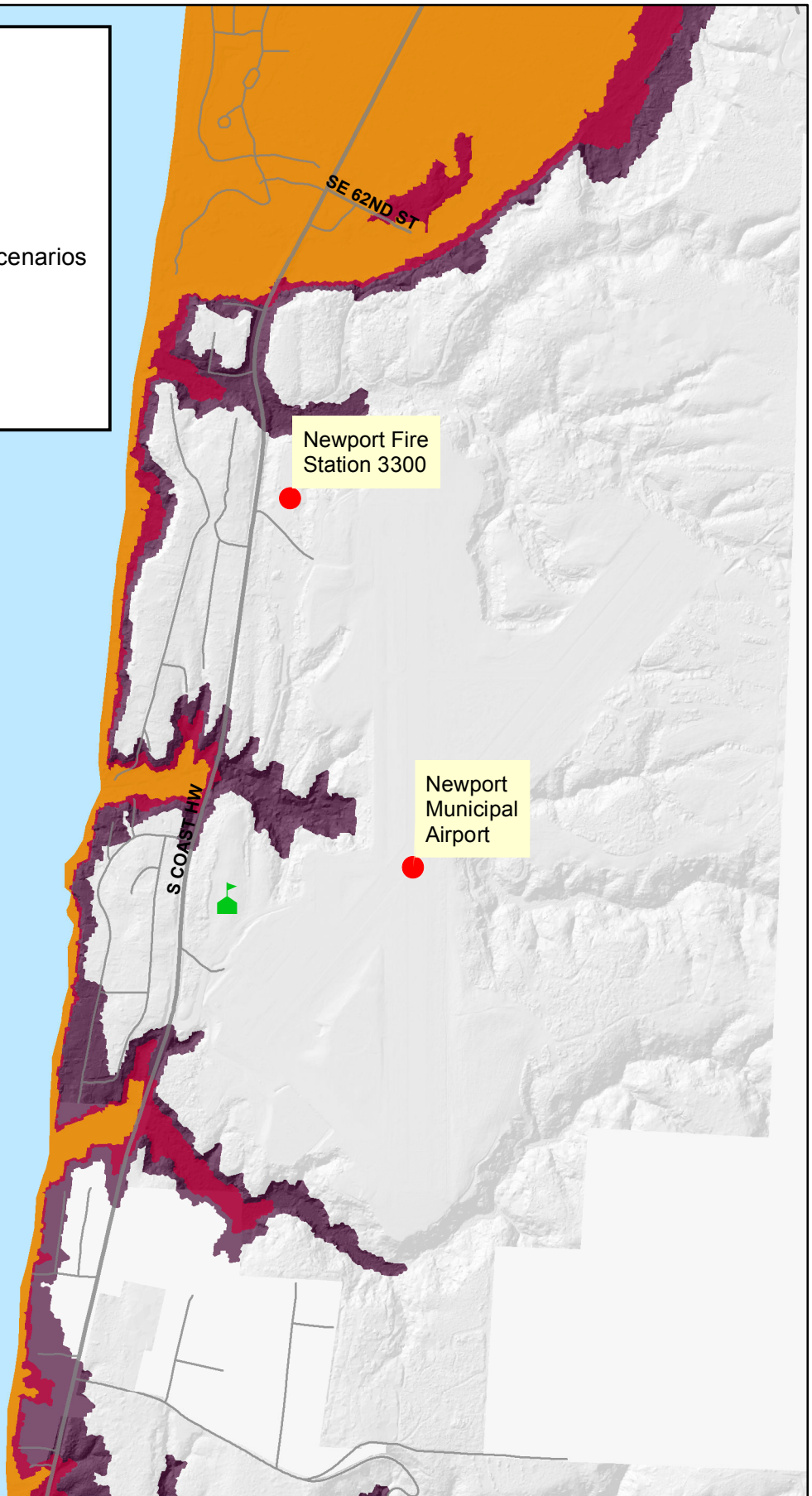
Image Taken July 2018
 4-inch, 4-band Digital Orthophotos
 Quantum Spatial, Inc. Corvallis, OR



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

Legend

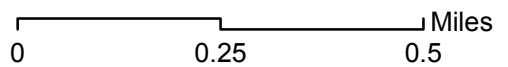
-  Child Care Facility
-  Critical Facility
-  Assembly Area
- Tsunami Inundation Scenarios
-  M
-  L
-  XXL



City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 Phone: 1.541.574.0629
 Fax: 1.541.574.0644







Newport Airport Neighborhood Critical Facilities and Tsunami Inundation Scenarios

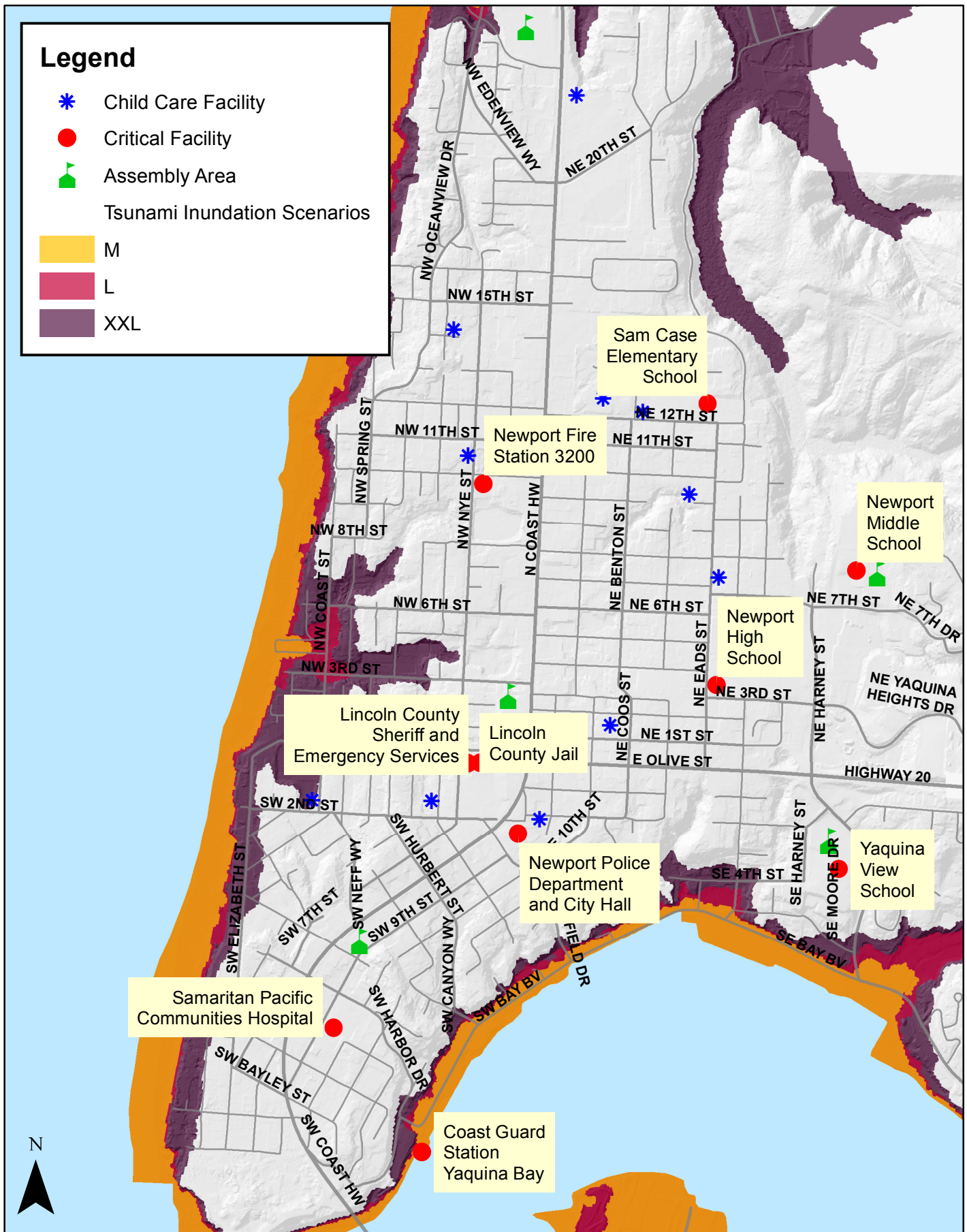
Image Taken July 2018
 4-inch, 4-band Digital Orthophotos
 Quantum Spatial, Inc. Corvallis, OR



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

Legend

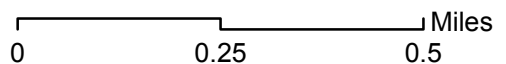
-  Child Care Facility
-  Critical Facility
-  Assembly Area
- Tsunami Inundation Scenarios
-  M
-  L
-  XXL



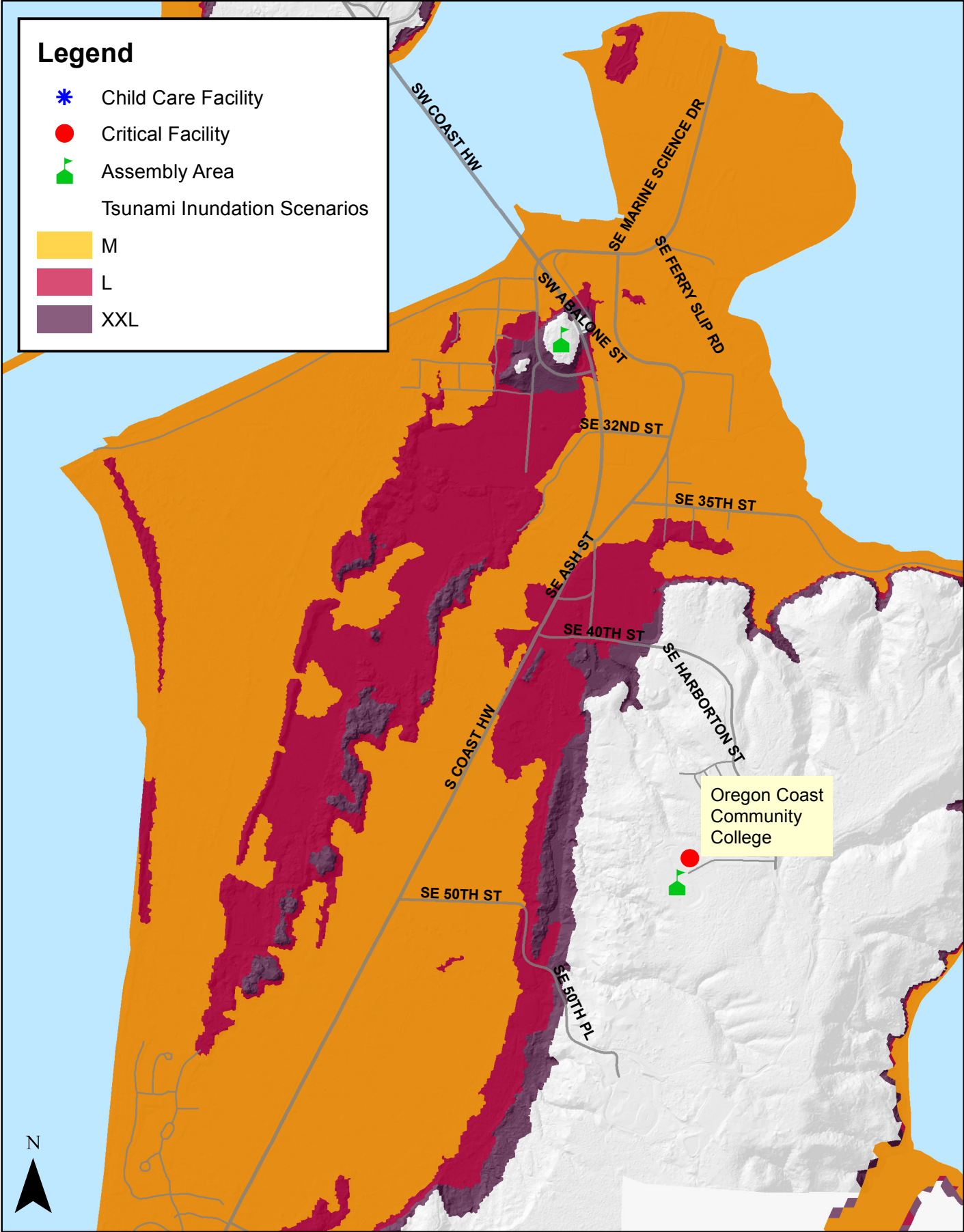
City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 Phone: 1.541.574.0629
 Fax: 1.541.574.0644

Central Newport Critical Facilities and Tsunami Inundation Scenarios

Image Taken July 2018
 4-inch, 4-band Digital Orthophotos
 Quantum Spatial, Inc. Corvallis, OR



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.



Legend

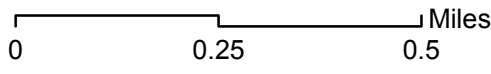
- * Child Care Facility
- Critical Facility
- ▬ Assembly Area
- Tsunami Inundation Scenarios
- M
- L
- XXL



City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 Phone: 1.541.574.0629
 Fax: 1.541.574.0644


**South Beach
 Critical Facilities and Tsunami Inundation Scenarios**

Image Taken July 2018
 4-inch, 4-band Digital Orthophotos
 Quantum Spatial, Inc. Corvallis, OR



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

Memorandum

To: Planning Commission/Commission Advisory Committee
 From: Derrick I. Tokos, AICP, Community Development Director 
 Date: August 7, 2019
 Re: Amendments to NMC Section 14.16.050, Development Standards for Accessory Dwelling Units

Section 7 of HB 2001 (2019) amends ORS 197.312 to prohibit local governments from requiring owner occupancy or off-street parking requirements associated with the construction of new Accessory Dwelling Units (ADUs). The City's zoning ordinance contains regulations that relate to both, and those provisions of the code will be deleted. Further, the proposed amendments will allow ADUs to be up to 800 square feet, or 75% of the size of the primary dwelling, whichever is less, and provides that they may even be larger in circumstances where a floor in a building is converted into an ADU. These changes align with recommendations contained in the ADU guidance document authored by the Oregon Department of Land Conservation and Development (DLCD), dated March 2018, and addresses concerns some property owners have expressed with the current size limitations.

It is timely for the Planning Commission to take up the amendments because Section 7 of HB 2001 will become effective on January 1, 2020, earlier than other provisions of the new law, and the City needs to remove conflicting language from its code prior to that date.

This work session is an opportunity for Commission members to review and discuss the draft amendments and any other changes it believes are warranted relative to development standards for ADUs. If, after the work session, the Commission is comfortable with the changes then a motion to initiate the code amendment process can be made at the regular meeting.

Attachments

August 12, 2019 mark-up of amendments to Section 14.16.050
 HB 2001 Enrolled (2019)
 DLCD guidance document, dated March 2018

(Deleted language shown in ~~strikethrough~~ and language to be added is depicted with a double underline. Staff comments are in italics.)

CHAPTER 14.16 ACCESSORY USES AND STRUCTURES

14.16.010 Purpose

The provisions of this section are intended to establish the relationship between primary and accessory structures or uses and to specify development criteria for accessory structures or uses.

14.16.020 General Provisions

- A. Accessory uses and structures are those of a nature customarily incidental and subordinate to the primary use of a property. Typical accessory structures include detached garages, sheds, workshops, greenhouses, gazebos, and similar structures that, with the exception of Accessory Dwelling Units, are not intended for habitation by people. The Community Development Director, or the Director's designee, shall determine if a proposed accessory use is customarily associated with, and subordinate to, a primary use and may at his/her discretion elect to defer the determination to the Planning Commission. A determination by the Planning Commission shall be processed as a code interpretation pursuant to [Section 14.52](#), Procedural Requirements.
- B. An accessory use or structure shall be subject to, and comply with, the same requirements that apply to the primary use except as provided in this section.

14.16.030 Accessory Use or Structure on a Separate Lot or Parcel

An accessory use or structure may be located on a lot or parcel that is separate from the primary use provided:

- A. The lot or parcel upon which the accessory use or structure is to be located is contiguous to the property containing the primary use; and
- B. The subject lots or parcels are under common ownership and within the same zone district; and
- C. A deed restriction, in a form approved by the city, is recorded stating that the property on which the accessory use or structure is to be located cannot be sold or

otherwise transferred separate from the lot or parcel containing the primary use. This restriction shall remain in effect until a primary use is situated on the same lot or parcel as the accessory building or the accessory building is removed.

14.16.040 Development Standards (Excluding Accessory Dwelling Units)

Accessory buildings and structures, except for Accessory Dwelling Units, shall conform to the following standards:

- A. The maximum floor area of the accessory structure in a residential zoning district shall not exceed 1,500 square feet or 65% of the total floor area of the primary structure, whichever is less.
- B. The maximum height of an accessory building in a residential zoning district shall not exceed that of the primary structure.
- C. Accessory buildings shall not extend beyond the required front yard setback lines of adjacent lots or parcels.
- D. Regardless of the setback requirements, a rear yard in a residential zone district may be reduced to five (5) feet for a one-story detached accessory building provided the structure does not exceed 625 square feet in size and 15 feet in height.

14.16.050 Development Standards - Accessory Dwelling Unit Standards

Accessory Dwelling Units shall conform to the following standards:

- A. Accessory Dwelling Units are exempt from the housing density standards of residential zoning districts.
- B. A maximum of one Accessory Dwelling Unit is allowed for each attached or detached single family dwelling on a lot or parcel.
- C. Accessory Dwelling Units may be a portion of the primary dwelling, attached to a garage, or a separate free-standing unit.
- D. The maximum floor area for an-a freestanding Accessory Dwelling Unit shall not exceed 600-800 square feet or 5075% of the area of the primary dwelling, whichever is less.

E. The maximum floor area for an Accessory Dwelling Unit that is a portion of a primary dwelling or attached to a garage shall not exceed 800 square feet or 75% of the area of the primary dwelling, whichever is less. However, an Accessory Dwelling Unit that results from the conversion of a level or floor (e.g. basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the Accessory Dwelling would be more than 800 square feet.

EF. The maximum height of an Accessory Dwelling Unit detached from the primary dwelling shall not exceed that of the primary dwelling. An Accessory Dwelling Unit attached to the primary dwelling is subject to the height limitation of the residential zone district within which it is located.

FG. Accessory Dwelling Units shall not extend beyond the required front yard setback lines of the adjacent lots or parcels.

H. An Accessory Dwelling Unit shall share water, sewer, electric, and gas connections with the primary dwelling.

~~I. Either the primary residence or Accessory Dwelling Unit shall be owner-occupied. The property owner shall prepare and record a covenant or deed restriction in a form acceptable to the city, providing future owners with notice of this requirement.~~

~~J. One off-street parking space shall be provided for each Accessory Dwelling Unit. This requirement is in addition to off-street parking standards that apply to the primary dwelling.~~

Staff: Section 7 of HB 2001 amends ORS 197.312 to prohibit local governments from imposing owner occupancy and off-street parking requirements for accessory dwelling units. The city's existing code contains provisions that relate to both, and they are being deleted. The City may require off-street parking in cases where an accessory dwelling is used as a short-term rental, and that is addressed in NMC Chapter 14.25. Square footage allowances for accessory dwelling units are being increased to align with the DLCDC model code.

14.16.060 Conditional Use Approval of Accessory Dwelling Units

If one or more of the standards of this Chapter cannot be met, an owner may seek approval of an Accessory Dwelling Unit

as a Conditional Use, pursuant to Chapter 14.34. A Conditional Use Permit may allow relief from one or more of the standards of the Chapter, but does not excuse the owner from complying with the standards that can be satisfied.

Enrolled
House Bill 2001

Sponsored by Representative KOTEK; Representatives FAHEY, HERNANDEZ, MARSH,
MITCHELL, POWER, STARK, WILLIAMS, ZIKA (Presession filed.)

CHAPTER

AN ACT

Relating to housing; creating new provisions; amending ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) As used in this section:

(a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) "Middle housing" means:

(A) Duplexes;

(B) Triplexes;

(C) Quadplexes;

(D) Cottage clusters; and

(E) Townhouses.

(c) "Townhouses" means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.

(2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(3) Except as provided in subsection (4) of this section, each city not within a metropolitan service district with a population of more than 10,000 and less than 25,000 shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. Nothing in this subsection prohibits a local government from allowing middle housing types in addition to duplexes.

(4) This section does not apply to:

(a) Cities with a population of 1,000 or fewer;

(b) Lands not within an urban growth boundary;

(c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;

(d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or

(e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

(5) Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

(6) This section does not prohibit local governments from permitting:

(a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

(b) Middle housing in areas not required under this section.

SECTION 3. (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations or amend its comprehensive plan to implement section 2 of this 2019 Act no later than:

(a) June 30, 2021, for each city subject to section 2 (3) of this 2019 Act; or

(b) June 30, 2022, for each local government subject to section 2 (2) of this 2019 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.

(3) A local government that has not acted within the time provided under subsection (1) of this section shall directly apply the model ordinance developed by the commission under subsection (2) of this section under ORS 197.646 (3) until the local government acts as described in subsection (1) of this section.

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and 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 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

(c) Assessing a construction tax under ORS 320.192 and 320.195.

(5) When a local government makes a legislative decision to amend its comprehensive plan or land use regulations to allow middle housing in areas zoned for residential use that allow for detached single-family dwellings, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

SECTION 4. (1) Notwithstanding section 3 (1) or (3) of this 2019 Act, the Department of Land Conservation and Development may grant to a local government that is subject to section 2 of this 2019 Act an extension of the time allowed to adopt land use regulations or amend its comprehensive plan under section 3 of this 2019 Act.

(2) An extension under this section may be applied only to specific areas where the local government has identified water, sewer, storm drainage or transportation services that are either significantly deficient or are expected to be significantly deficient before December 31, 2023, and for which the local government has established a plan of actions that will remedy the deficiency in those services that is approved by the department. The extension may not extend beyond the date that the local government intends to correct the deficiency under the plan.

(3) In areas where the extension under this section does not apply, the local government shall apply its own land use regulations consistent with section 3 (1) of this 2019 Act or the model ordinance developed under section 3 (2) of this 2019 Act.

(4) A request for an extension by a local government must be filed with the department no later than:

(a) December 31, 2020, for a city subject to section 2 (3) of this 2019 Act.

(b) June 30, 2021, for a local government subject to section 2 (2) of this 2019 Act.

(5) The department shall grant or deny a request for an extension under this section:

(a) Within 90 days of receipt of a complete request from a city subject to section 2 (3) of this 2019 Act.

(b) Within 120 days of receipt of a complete request from a local government subject to section 2 (2) of this 2019 Act.

(6) The department shall adopt rules regarding the form and substance of a local government's application for an extension under this section. The department may include rules regarding:

(a) Defining the affected areas;

(b) Calculating deficiencies of water, sewer, storm drainage or transportation services;

(c) Service deficiency levels required to qualify for the extension;

(d) The components and timing of a remediation plan necessary to qualify for an extension;

(e) Standards for evaluating applications; and

(f) Establishing deadlines and components for the approval of a plan of action.

SECTION 5. ORS 197.296 is amended to read:

197.296. (1)(a) The provisions of subsections (2) to (9) of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional framework plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of **existing and projected** housing need by type and density range, in accordance with **all factors under** ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity *[and need]* pursuant to subsection [(3)] **(3)(a)** of this section must be based on data relating to land within the urban growth boundary that has been collected since the last *[periodic]* review or *[five]* **six** years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) **Market factors that may substantially impact future urban residential development;**
and

[(C) Demographic and population trends;]

[(D) Economic trends and cycles; and]

[(E)] **(D)** The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity *[and need]*. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period *[for economic cycles and trends]* longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or *[more]* **both** of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary[;].

(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall *[monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or]* **adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable vali-**

ation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.

[(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.]

(c) As used in this subsection, “authorized density level” has the meaning given that term in ORS 227.175.

(7) Using the **housing need** analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

(b) *[The]* A local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved **following the adoption of these actions**. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.

(9) In establishing that actions and measures adopted under subsections (6) and (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section, *[and]* is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section **and is in areas where sufficient urban services are planned to enable the higher density development to occur over the 20-year period**. Actions or measures, or both, may include but are not limited to:

- (a) Increases in the permitted density on existing residential land;
- (b) Financial incentives for higher density housing;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
- (d) Removal or easing of approval standards or procedures;
- (e) Minimum density ranges;
- (f) Redevelopment and infill strategies;
- (g) Authorization of housing types not previously allowed by the plan or regulations;
- (h) Adoption of an average residential density standard; and
- (i) Rezoning or redesignation of nonresidential land.

(10)(a) The provisions of this subsection apply to local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of less than 25,000.

(b) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan that requires the application of a statewide planning goal relating to buildable lands for residential use, a city shall, according to rules of the commission:

(A) Determine the estimated housing needs within the jurisdiction for the next 20 years;
 (B) Inventory the supply of buildable lands available within the urban growth boundary to accommodate the estimated housing needs determined under this subsection; and

(C) Adopt measures necessary to accommodate the estimated housing needs determined under this subsection.

(c) For the purpose of the inventory described in this subsection, “buildable lands” includes those lands described in subsection (4)(a) of this section.

SECTION 6. ORS 197.303 is amended to read:

197.303. (1) As used in ORS [197.307] **197.295 to 197.314**, “needed housing” means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), a local government shall use the population projections prescribed by ORS 195.033 or 195.036 and shall consider and adopt findings related to changes in each of the following factors since the last periodic or legislative review or six years, whichever is greater, and the projected future changes in these factors over a 20-year planning period:

(a) Household sizes;

(b) Household demographics in terms of age, gender, race or other established demographic category;

(c) Household incomes;

(d) Vacancy rates; and

(e) Housing costs.

(3) A local government shall make the estimate described in subsection (2) of this section using a shorter time period than since the last periodic or legislative review or six years, whichever is greater, if the local government finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.

(4) A local government shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. The local government must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.

[(2)] **(5) Subsection (1)(a) and (d) of this section does not apply to:**

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

[(3)] **(6) A local government may take an exception under ORS 197.732 to the definition of “needed housing” in subsection (1) of this section in the same manner that an exception may be taken under the goals.**

SECTION 7. ORS 197.312, as amended by section 7, chapter 15, Oregon Laws 2018, is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(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) As used in this subsection[,]:

(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.

(6) Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.

SECTION 8. Section 1, chapter 47, Oregon Laws 2018, is amended to read:

Sec. 1. (1) For purposes of this section:

(a) A household is severely rent burdened if the household spends more than 50 percent of the income of the household on gross rent for housing.

(b) A regulated affordable unit is a residential unit subject to a regulatory agreement that runs with the land and that requires affordability for an established income level for a defined period of time.

[(c) A single-family unit may be rented or owned by a household and includes single-family homes, duplexes, townhomes, row homes and mobile homes.]

(2)(a) The Housing and Community Services Department shall annually provide to the governing body of each city in this state with a population greater than 10,000 the most current data available from the United States Census Bureau, or any other source the department considers at least as reliable, showing the percentage of renter households in the city that are severely rent burdened.

(b) The Housing and Community Services Department, in collaboration with the Department of Land Conservation and Development, shall develop a survey form on which the governing body of

a city may provide specific information related to the affordability of housing within the city, including, but not limited to:

(A) The actions relating to land use and other related matters that the governing body has taken to increase the affordability of housing and reduce rent burdens for severely rent burdened households; and

(B) The additional actions the governing body intends to take to reduce rent burdens for severely rent burdened households.

(c) If the Housing and Community Services Department determines that at least 25 percent of the renter households in a city are severely rent burdened, the department shall provide the governing body of the city with the survey form developed pursuant to paragraph (b) of this subsection.

(d) The governing body of the city shall return the completed survey form to the Housing and Community Services Department and the Department of Land Conservation and Development within 60 days of receipt.

(3)(a) In any year in which the governing body of a city is informed under this section that at least 25 percent of the renter households in the city are severely rent burdened, the governing body shall hold at least one public meeting to discuss the causes and consequences of severe rent burdens within the city, the barriers to reducing rent burdens and possible solutions.

(b) The Housing and Community Services Department may adopt rules governing the conduct of the public meeting required under this subsection.

(4) No later than February 1 of each year, the governing body of each city in this state with a population greater than 10,000 shall submit to the Department of Land Conservation and Development a report for the immediately preceding calendar year setting forth separately for each of the following categories the total number of units that were permitted and the total number that were produced:

(a) Residential units.

(b) Regulated affordable residential units.

(c) Multifamily residential units.

(d) Regulated affordable multifamily residential units.

(e) Single-family [*units*] **homes**.

(f) Regulated affordable single-family [*units*] **homes**.

(g) **Accessory dwelling units.**

(h) **Regulated affordable accessory dwelling units.**

(i) **Units of middle housing, as defined in section 2 of this 2019 Act.**

(j) **Regulated affordable units of middle housing.**

SECTION 9. ORS 455.610 is amended to read:

455.610. (1) The Director of the Department of Consumer and Business Services shall adopt, and amend as necessary, a Low-Rise Residential Dwelling Code that contains all requirements, including structural design provisions, related to the construction of residential dwellings three stories or less above grade. The code provisions for plumbing and electrical requirements must be compatible with other specialty codes adopted by the director. The Electrical and Elevator Board, the Mechanical Board and the State Plumbing Board shall review, respectively, amendments to the electrical, mechanical or plumbing provisions of the code.

(2) Changes or amendments to the code adopted under subsection (1) of this section may be made when:

(a) Required by geographic or climatic conditions unique to Oregon;

(b) Necessary to be compatible with other statutory provisions;

(c) Changes to the national codes are adopted in Oregon; or

(d) Necessary to authorize the use of building materials and techniques that are consistent with nationally recognized standards and building practices.

(3) Notwithstanding ORS 455.030, 455.035, 455.110 and 455.112, the director may, at any time following appropriate consultation with the Mechanical Board or Building Codes Structures Board,

amend the mechanical specialty code or structural specialty code to ensure compatibility with the Low-Rise Residential Dwelling Code.

(4) The water conservation provisions for toilets, urinals, shower heads and interior faucets adopted in the Low-Rise Residential Dwelling Code shall be the same as those adopted under ORS 447.020 to meet the requirements of ORS 447.145.

(5) The Low-Rise Residential Dwelling Code shall be adopted and amended as provided by ORS 455.030 and 455.110.

(6) The director, by rule, shall establish uniform standards for a municipality to allow an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code in areas where the local jurisdiction determines that the fire apparatus means of approach to a property or water supply serving a property does not meet applicable fire code or state building code requirements. The alternate method of construction, which may include but is not limited to the installation of automatic fire sprinkler systems, must be approved in conjunction with the approval of an application under ORS 197.522.

(7) For lots of record existing before July 2, 2001, or property that receives any approval for partition, subdivision or construction under ORS 197.522 before July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code may apply the uniform standards established by the director pursuant to subsection (6) of this section. For property that receives all approvals for partition, subdivision or construction under ORS 197.522 on or after July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code must apply the uniform standards established by the director pursuant to subsection (6) of this section.

(8) The director, by rule, shall establish uniform standards for a municipality to allow alternate approval of construction related to conversions of single-family dwellings into no more than four residential dwelling units built to the Low-Rise Residential Dwelling Code that received occupancy approval prior to January 1, 2020. The standards established under this subsection must include standards describing the information that must be submitted before an application for alternate approval will be deemed complete.

(9)(a) A building official described in ORS 455.148 or 455.150 must approve or deny an application for alternate approval under subsection (8) of this section no later than 15 business days after receiving a complete application.

(b) A building official who denies an application for alternate approval under this subsection shall provide to the applicant:

(A) A written explanation of the basis for the denial; and

(B) A statement that describes the applicant's appeal rights under subsection (10) of this section.

(10)(a) An appeal from a denial under subsection (9) of this section must be made through a municipal administrative process. A municipality shall provide an administrative process that:

(A) Is other than a judicial proceeding in a court of law; and

(B) Affords the party an opportunity to appeal the denial before an individual, department or body that is other than a plan reviewer, inspector or building official for the municipality.

(b) A decision in an administrative process under this subsection must be completed no later than 30 business days after the building official receives notice of the appeal.

(c) Notwithstanding ORS 455.690, a municipal administrative process required under this subsection is the exclusive means for appealing a denial under subsection (9) of this section.

(11) The costs incurred by a municipality under subsections (9) and (10) of this section are building inspection program administration and enforcement costs for the purpose of fee adoption under ORS 455.210.

SECTION 10. (1) It is the policy of the State of Oregon to reduce to the extent practicable administrative and permitting costs and barriers to the construction of middle housing, as defined in section 2 of this 2019 Act, while maintaining safety, public health and the general welfare with respect to construction and occupancy.

(2) The Department of Consumer and Business Services shall submit a report describing rules and standards relating to low-rise residential dwellings proposed under ORS 455.610, as amended by section 9 of this 2019 Act, in the manner provided in ORS 192.245, to an interim committee of the Legislative Assembly related to housing no later than January 1, 2020.

SECTION 11. Section 12 of this 2019 Act is added to and made a part of ORS 94.550 to 94.783.

SECTION 12. A provision in a governing document that is adopted or amended on or after the effective date of this 2019 Act, is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of housing that is otherwise allowable under the maximum density of the zoning for the land.

SECTION 13. A provision in a recorded instrument affecting real property is not enforceable if:

(1) The provision would allow the development of a single-family dwelling on the real property but would prohibit the development of:

- (a) Middle housing, as defined in section 2 of this 2019 Act; or
- (b) An accessory dwelling unit allowed under ORS 197.312 (5); and

(2) The instrument was executed on or after the effective date of this 2019 Act.

SECTION 14. (1) Sections 2, 12 and 13 of this 2019 Act and the amendments to ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018, by sections 5 to 9 of this 2019 Act become operative on January 1, 2020.

(2) The Land Conservation and Development Commission, the Department of Consumer and Business Services and the Residential and Manufactured Structures Board may take any actions before the operative date specified in subsection (1) of this section necessary to enable the commission, department or board to exercise, on or after the operative date specified in subsection (1) of this section, the duties required under sections 2, 3 and 10 of this 2019 Act and the amendments to ORS 455.610 by section 9 of this 2019 Act.

SECTION 15. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$3,500,000 for the purpose of providing technical assistance to local governments in implementing section 3 (1) of this 2019 Act and to develop plans to improve water, sewer, storm drainage and transportation services as described in section 4 (2) of this 2019 Act. The department shall prioritize technical assistance to cities or counties with limited planning staff or that commit to implementation earlier than the date required under section 3 (1) of this 2019 Act.

SECTION 16. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House June 20, 2019

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 30, 2019

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

.....
Bev Clarno, Secretary of State

**GUIDANCE ON IMPLEMENTING
THE ACCESSORY DWELLING UNITS (ADU) REQUIREMENT
UNDER OREGON SENATE BILL 1051**



*M. Klepinger's backyard detached ADU, Richmond neighborhood, Portland, OR.
(Photo courtesy of Ellen Bassett and accessorydwellings.org.)*

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

MARCH 2018



**Oregon Department of
Land Conservation
and Development**

Introduction

As housing prices in Oregon go up, outpacing employment and wage growth, the availability of affordable housing is decreasing in cities throughout the state. While Oregon’s population continues to expand, the supply of housing, already impacted by less building during the recession, has not kept up. To address the lack of housing supply, House Speaker Tina Kotek introduced House Bill 2007 during the 2017 legislative session to, as she stated, “remove barriers to development.” Through the legislative process, legislators placed much of the content of House Bill 2007 into Senate Bill 1051, which then passed, and was signed into law by Governor Brown on August 15, 2017. In addition, a scrivener’s error¹ was corrected through the passage of HB 4031 in 2018.

Among the provisions of SB 1051 and HB 4031 is the requirement that cities and counties of a certain population allow accessory dwelling units (ADUs) as described below:

- 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) *As used in this subsection, “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.*

This new requirement becomes effective on July 1, 2018 and subject cities and counties must accept applications for ADUs inside urban growth boundaries (UGBs) starting July 1, 2018. Many local governments in Oregon already have ADU regulations that meet the requirements of SB 1051, however, some do not. Still others have regulations that, given the overall legislative direction to encourage the construction of ADUs to meet the housing needs of Oregon’s cities, are not “reasonable.” The Oregon Department of Land Conservation and Development (DLCD) is issuing this guidance and model code language to help local governments comply with the legislation. The model code language is included on its own page at the end of this document.

¹ *The scrivener’s error in SB 1051 removed the words “within the urban growth boundary.” HB 4031 added the words into statute and thus limited the siting of ADUs to within UGBs.*

Guidance by Topic

The purpose of the following guidance is to help cities and counties implement the ADU requirement in a manner that meets the letter and spirit of the law: to create more housing in Oregon by removing barriers to development.

Number of Units

The law requires subject cities and counties to allow “at least one accessory dwelling unit for each detached single-family dwelling.” While local governments must allow one ADU where required, DLCD encourages them to consider allowing two units. For example, a city or county could allow one detached ADU and allow another as an attached or interior unit (such as a basement conversion). Because ADUs blend in well with single-family neighborhoods, allowing two units can help increase housing supply while not having a significant visual impact. Vancouver, BC is a successful example of such an approach.

Siting Standards

In order to simplify standards and not create barriers to development of ADUs, DLCD recommends applying the same or less restrictive development standards to ADUs as those for other accessory buildings. Typically that would mean that an ADU could be developed on any legal lot or parcel as long as it met the required setbacks and lot coverage limits; local governments should not mandate a minimum lot size for ADUs. So that lot coverage requirements do not preclude ADUs from being built on smaller lots, local governments should review their lot coverage standards to make sure they don’t create a barrier to development. To address storm water concerns, consider limits to impermeable surfaces rather than simply coverage by structures.

In addition, any legal nonconforming structure (such as a house or outbuilding that doesn’t meet current setback requirements) should be allowed to contain, or be converted to, an ADU as long as the development does not increase the nonconformity.

Design Standards

Any design standards required of ADUs must be clear and objective (ORS 197.307[4]). Clear and objective standards do not contain words like “compatible” or “character.” With the exception of ADUs that are in historic districts and must follow the historic district regulations, DLCD does not recommend any special design standards for ADUs. Requirements that ADUs match the materials, roof pitch, windows, etc. of the primary dwelling can create additional barriers to development and sometimes backfire if the design and materials of the proposed

ADU would have been of superior quality to those of the primary dwelling, had they been allowed.

Parking

Requiring off-street parking is one of the biggest barriers to developing ADUs and it is recommended that jurisdictions not include an off-street parking requirement in their ADU standards. Adding off-street parking on many properties, especially in older centrally-located areas where more housing should be encouraged, is often either very expensive or physically impossible. In addition, when adding an additional off-street parking space requires a new or widened curb cut, it removes existing on-street parking, resulting in no net gain of parking supply. As an alternative to requiring off-street parking for ADUs, local governments can implement a residential parking district if there is an on-street parking supply shortage. For more help on parking issues, visit www.oregon.gov/lcd/tgm/pages/parking.aspx or contact DLCD.

Owner Occupancy

Owner-occupancy requirements, in which the property owner is required to live on the property in either the primary or accessory dwelling unit, are difficult to enforce and not recommended. They may be a barrier to property owners constructing ADUs, but will more likely simply be ignored and constitute an on-going enforcement headache for local governments.

Public Utilities

Development codes that require ADUs to have separate sewer and water connections create barriers to building ADUs. In some cases, a property owner may want to provide separate connections, but in other cases doing so may be prohibitively expensive.

System Development Charges (SDCs)

While SDCs are not part of the development code and SB 1051 does not require them to be updated, local governments should consider revising their SDCs to match the true impact of ADUs in order to remove barriers to their development. ADUs are generally able to house fewer people than average single-family dwellings, so their fiscal impact would be expected to be less than a single-family dwelling. Accordingly, it makes sense that they should be charged lower SDCs than primary detached single-family dwellings.

This page intentionally left blank.

Accessory Dwellings (model code)

Note: ORS 197.312 requires that at least one accessory dwelling be allowed per detached single-family dwelling in every zone within an urban growth boundary that allows detached single-family dwellings. Accessory dwellings are an economical way to provide additional housing choices, particularly in communities with high land prices or a lack of investment in affordable housing. They provide an opportunity to increase housing supply in developed neighborhoods and can blend in well with single-family detached dwellings. Accessory dwelling regulations can be difficult to enforce when local codes specify who can own or occupy the homes. Requirements that accessory dwellings have separate connections to and pay system development charges for water and sewer services can pose barriers to development. Concerns about neighborhood compatibility, parking, and other factors should be considered and balanced against the need to address Oregon's housing shortage by removing barriers to development.

The model development code language below provides recommended language for accessory dwellings. The italicized sections in brackets indicate options to be selected or suggested numerical standards that communities can adjust to meet their needs. Local housing providers should be consulted when drafting standards for accessory dwellings, and the following standards should be tailored to fit the needs of your community.

Accessory dwellings, where allowed, are subject to review and approval through a Type I procedure[, pursuant to Section _____,] and shall conform to all of the following standards:

[A. One Unit. *A maximum of one Accessory Dwelling is allowed per legal single-family dwelling. The unit may be a detached building, in a portion of a detached accessory building (e.g., above a garage or workshop), or a unit attached or interior to the primary dwelling (e.g., an addition or the conversion of an existing floor).*

/

A. Two Units. *A maximum of two Accessory Dwellings are allowed per legal single-family dwelling. One unit must be a detached Accessory Dwelling, or in a portion of a detached accessory building (e.g., above a garage or workshop), and one unit must be attached or interior to the primary dwelling (e.g., an addition or the conversion of an existing floor).]*

B. Floor Area.

1. A detached Accessory Dwelling shall not exceed [800-900] square feet of floor area, or [75] percent of the primary dwelling's floor area, whichever is smaller.
2. An attached or interior Accessory Dwelling shall not exceed [800-900] square feet of floor area, or [75] percent of the primary dwelling's floor area, whichever is smaller. However, Accessory Dwellings that result from the conversion of a level or floor (e.g., basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the Accessory Dwelling would be more than [800-900] square feet.

C. Other Development Standards. Accessory Dwellings shall meet all other development standards (e.g., height, setbacks, lot coverage, etc.) for buildings in the zoning district, except that:

1. Conversion of an existing legal non-conforming structure to an Accessory Dwelling is allowed, provided that the conversion does not increase the non-conformity; and

2. No off-street parking is required for an Accessory Dwelling.

Definition (This should be included in the “definitions” section of the zoning ordinance. It matches the definition for Accessory Dwelling found in ORS 197.312)

Accessory Dwelling – An interior, attached, or detached residential structure that is used in connection with, or that is accessory to, a single-family dwelling.

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)



July 8, 2019

Work Session

- Review Conceptual Framework for New Tsunami Hazard Overlay
- Discuss Draft Public Parking Facilities Element to the Newport Comprehensive Plan

July 8, 2019

Regular Session

- File No. 1-Z-19 Amendments to NMC Chapter 14.21, Geologic Hazards (record left open)
- File No. 2-Z-19 Municipal Code Amendments related to planting, pruning and removing trees from the public right-of-way (continued to 7/22/19)

July 22, 2019

Work Session

- Review Final Draft of the Lincoln County Regional Housing Strategy
- 2019 State of Oregon Legislative Session Update

July, 22, 2019

Regular Session

- Deliberations on File No. 1-Z-19, Amendments to NMC Chapter 14.21, Geologic Hazards
- File No. 2-Z-19 (Continuation) Amendments related to planting, pruning and removing trees from the public right-of-way

August 12, 2019

Work Session

- Review Draft Tsunami Hazard Overlay Zone Code
- Review Amendments to NMC Section 14.16.050, Development Standards for ADUs
- Updated Planning Commission Work Program

August 12, 2019

Regular Session

- File 3-CP-17 Amendment to the Parks & Recreation Chapter of the Newport Comprehensive Plan
- Update on FEMA Community Assistance Visit and Upcoming Flood Insurance Workshops

August 26, 2019

Work Session

- Review Draft Amendments related to Tiny Homes and MFDs on individual lots

August 26, 2019

Regular Session

- File No. 1-ADJ-19, height adjustment at 844 SE Crescent Place

September 9, 2019

Work Session

- Review Draft Amendments to NMC Chapter 14.20, Flood Hazard Areas (per 8/27 CAV)

September 9, 2019

Regular Session

- File No. 1-AX-19 / 3-Z-19, Annexation of 14-unit mobile home park at 4263 S Coast Hwy
- File No. 1-CP-19 Amendments to the Public Parking Facilities Element of the Newport Comprehensive Plan

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)



September 23, 2019 Work Session

- Placeholder for Update on TSP Existing Conditions Analysis and Fall Outreach Program
- File 3-CP-18 Comprehensive Plan Amendments related to the Sewer Master Plan

September 23, 2019 Regular Session

- File No. 4-Z-16, Amendments to NMC 14.20 Flood Hazard Code and FIRM maps
- Placeholder for hearing on Tsunami Hazard Overlay Zone
- Placeholder for hearing on Amendments to NMC 14.16, Development Standards for ADUs

October 14, 2019 Work Session

- File 2-CP-18 Amendments related to Storm Drainage Master Plan
- Discuss Conceptual Framework for Amendments to Natural Features Chapter of the Comprehensive Plan (including beachfront protective structures)

October 14, 2019 Regular Session

- Placeholder for hearing on amendments related to Tiny Homes and MFDs

October 28, 2019 Work Session

- Review Draft Amendments to NMC Chapter 14.14, Parking, Loading, Access Requirements (implementing Parking Management Plan Recommendations)
- Review scope of work for South Beach US 101 Corridor Refinement Plan

October 28, 2019 Regular Session

- Placeholder for hearing on Comprehensive Plan Amendments related to Sewer Master Plan

November 12, 2019 Work Session

- Options for Implementing HB 2001 provisions related to additional density in R-1/R-2 zones
- Draft Amendments to Natural Features Chapter of the Comprehensive Plan (including beachfront protective structures)

November 12, 2019 Regular Session

- Placeholder for hearing on Comp Plan Amendments related to Stormwater Master Plan

November 25, 2019 No Meeting

December 9, 2019 Work Session

- Placeholder for review of Urban Service Area Agreements (Lincoln County)

December 9, 2019 Regular Session

- Placeholder for hearing on Amendments to Natural Features Chapter of the Comp Plan
- Placeholder for hearing on Amendments to NMC Chapter 14.14, Parking, Loading, Access Requirements

December 23, 2019 No Meeting
