



Agenda Item

March 22, 2021

TO: Honorable Mayor and City Council

THROUGH: Scott Derickson, City Administrator

FROM: Chris Kerr, Community Development Director
Colin Cortes, AICP, CNU-A, Senior Planner

SUBJECT: **Middle Housing Project Briefing**

Recommendation:

No formal Council action is required this date. The purpose is to introduce the Middle Housing Project consultant and brief the Council.

Background:

The [Middle Housing Project](#) serves compliance with changes in state law because of the 2019 legislature passing [House Bill \(HB\) 2001](#) and in June 2021 is to result in adoption-ready legislative amendments to the [Comprehensive Plan](#) and [Woodburn Development Ordinance \(WDO\)](#).

The immediate key understanding of the project is that it's about more than just allowing duplexes. State rules now generally require cities to allow "middle housing" (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) in areas where they allow single-family housing. The rules also generally prohibit cities from applying to middle housing standards more restrictive than for houses. In other words, regulations must treat middle housing types equitably with detached houses.

Therefore, amendments will be extensive and detailed.

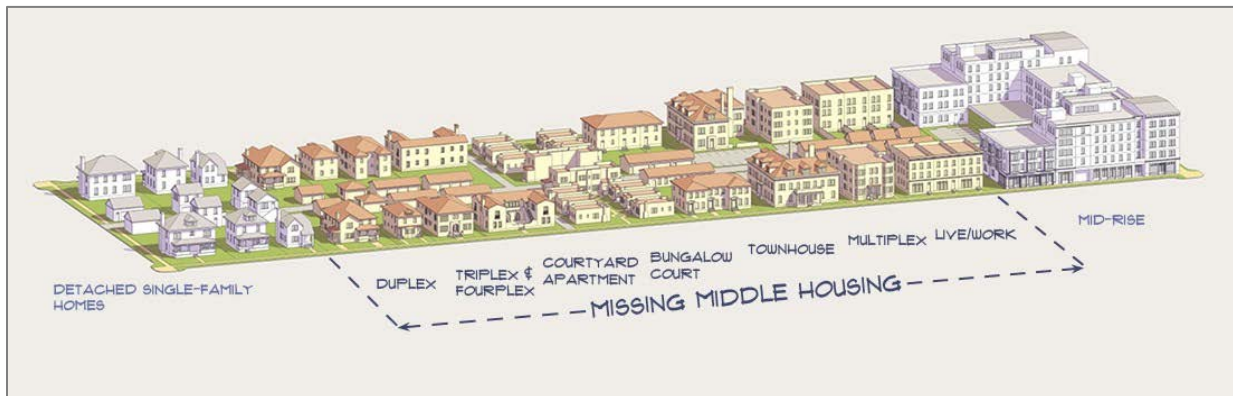
The City applied for and received state grants totaling \$80,000 that fund the project. The grants establish the June 2021 deadline for adoption-ready amendments; however, per HB 2001 Section 3, the City has until the deadline of June 30, 2022 to adopt amendments that comply with the bill.

Agenda Item Review: City Administrator ___x___ City Attorney ___x___ Finance ___x___

Staff briefed the Planning Commission, which is the project advisory committee, on December 10, 2020 and will do so again April 8, 2021. A technical advisory group (TAG) will advise staff and the Commission starting as early as late March.


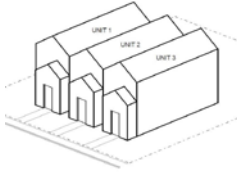
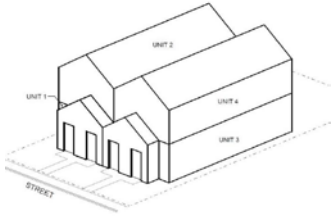


What's Middle Housing?

It refers to a wide range of housing types of a scale and density that fall between detached, single-family houses and midrise, 3-5 story apartment/condo buildings. In 2010 Daniel Parolek, principal of the firm Opticos Design, coined the phrase "missing middle housing", and the firm drew a freely licensed and widely shared image of a spectrum of housing types and what part of that is middle:



Missing Middle Housing conceptual diagram, courtesy Opticos Design

HB 2001 uses and narrowly defines the phrase "middle housing" to include duplexes, triplexes, quadplexes, townhouses, and cottage clusters. The definition of each and each housing type is illustrated in Background Report Section 1 State Policy Framework, p. 4 Figure 2, reproduced below:

<p>Duplex Two attached dwelling units on a Lot or Parcel. A Medium or Large City* may define a Duplex to include two detached dwellings on <i>one lot</i>.</p> 	<p>Triplex 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 dwellings on <i>one lot</i>.</p> 
<p>Quadplex 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 dwellings on <i>one lot</i>.</p> 	<p>Townhouse A dwelling unit that is part of a row of two or more attached dwelling units, where each unit is located on <i>its own lot</i> and shares at least one common wall with an adjacent dwelling.</p> 
<p>Cottage Cluster A grouping of no fewer than four detached dwelling units with a footprint of less than 900 square feet each that common courtyard. A Medium or Large City* may allow Cluster dwellings to be located on <i>a lot or with each on a lot</i>.</p> <p>*Woodburn falls into the Large City category.</p>	 <p>per acre includes a Cottage dwelling</p>

Adapted from Background Report, Section 1 State Policy Framework, Figure 2 Definitions of Middle Housing Types, courtesy Cascadia Partners LLC

Discussion:

Background Report

To help the City contend with necessary changes, the consultant drafted a background report composed of three sections:

1. State Policy Framework
2. Plan and Code Review
3. Neighborhood Patterns Analysis

Here are guiding questions on the Background Report:

1. Does the Council understand the project purpose and scope?
2. Is Section 3 Neighborhood Patterns Analysis helpful by providing guidance for tailoring policies and WDO regulations by neighborhood?
3. What are initial concerns about the project?

Code Concepts Report

The purpose of the Code Concepts Report is to outline a set of conceptual options for the City to implement compliant amendments. Here are guiding questions:

1. Are the code concepts understandable?
2. What feedback does Council have on the concepts and implications? What does it want to see built and not want to see built?
3. Does the Council prefer one of the concepts?

IBTER Audit Report

The audit serves to inform whether or not the City would, as HB 2001 Section 4 allows, submit to the state of Oregon an “infrastructure-based time extension request” (IBTER) to delay allowance of middle housing. (Delay can only be temporary, in a small and specific area or areas, with a deadline action plan to remedy the infrastructure deficiency, and with state discretion to approve or deny an IBTER.)

Next Steps

Staff is scheduled to return to the Council by end of May 2021 with draft alternative actions and recommended Comprehensive Plan and WDO amendments.

Financial Impact:

There's none thanks to two grants totaling \$80,000 that fund the project thanks to the 2019 legislature through the Oregon Department of Land Conservation and Development (DLCD) awarding them June 2020. (The Council on March 9, 2020 authorized the mayor to sign grant applications to DLCD that staff had prepared.)

Attachments:

1. Consultant's cover memo (Mar. 17, 2021; 2 pages)
2. Background Report (Jan. 19, 2021; 74 pages)
3. Code Concepts Report (Mar. 15, 2021; 21 pages)
4. IBTER Audit Report (Feb. 22, 2021; 8 pages)
5. City zoning map (June 2020)

Overview of the Woodburn Middle Housing Project

TO: City of Woodburn City Council
FROM: Jamin Kimmell, Cascadia Partners LLC and Serah Breakstone, Otak, Inc.
DATE: March 17, 2021

What is Middle Housing and House Bill 2001?

The purpose of this memo is to provide a brief summary of the Woodburn Middle Housing Implementation Project. The primary goal of the project is to prepare the City to amend its development regulations in order to comply with the requirements of Oregon House Bill 2001 (“HB 2001”). HB 2001 was passed in 2019 and it requires all cities with a population of over 25,000 to allow “middle housing” types in most residential zones. The intent of HB 2001 is to provide Oregonians with more housing choices, especially housing choices more people can afford.

HB 2001 requires the City to allow duplexes on every lot where a single-family house is permitted and to allow other middle housing types—triplexes, quadplexes, townhouses, and cottage cluster housing—in most areas where single-family housing is permitted. The City must amend its development regulations to comply with these requirements by June 30, 2022.

A secondary goal of the project is to evaluate whether any areas within the City would qualify for an extension of this deadline because the area does not have sufficient infrastructure to support middle housing. This is known as an Infrastructure-Based Time Extension Request or “IBTER”.

Project Scope and Timeline

The City has hired a consultant team led by Cascadia Partners, LLC and Otak, Inc. to assist with the project. The scope of the code update project includes an audit of the City’s development code and comprehensive plan, preparing options for implementation, two rounds of public engagement activities, and preparing adoption-ready code amendments. The scope of the IBTER project includes an audit of existing infrastructure deficiencies, a plan for remediating the deficiencies, and preparation of an IBTER application that would be ready to submit to the state.

Project work began in October of 2020 and is scheduled to complete by June 2021. The first round of public engagement activities will occur in late March/early April, then another round in May. Several deliverables have been completed and are summarized below.

Summary of Background Report

The Background Report provides a summary of the new state requirements as they apply to Woodburn, an audit of the Woodburn Development Ordinance for compliance with those requirements, and an analysis of Woodburn’s residential areas. Key findings include:

- The City must amend all residential zones to comply with HB 2001. No zones currently comply with HB 2001. Middle housing types must be defined and allowed in every zone.
- Many existing development standards that would apply to middle housing, such as minimum lot sizes and off-street parking requirements, must be amended.

- Though the state rules are prescriptive in some respects, there are many options for applying new design and development standards to help ensure that middle housing “fits in” with existing housing stock across Woodburn’s various neighborhoods.

Summary of Code Concepts Report

The Code Concepts Report outlines a set of options for how the City can come into compliance with HB 2001. The report addresses nine topics related to regulation of middle housing, including lot sizes, building size, architecture, landscaping, and code incentives. Each option is evaluated based on how it would affect three goals: housing options/affordability, compatibility/design, and administration. These options have important consequences for where middle housing development can occur and what it will look like.

Summary of Infrastructure Audit Report

The team conducted audits of water, sanitary sewer, stormwater and transportation infrastructure to evaluate if any areas in Woodburn would warrant an IBTER application. The audits were based on existing, available information, stakeholder interviews, and City staff input. The audits did not reveal infrastructure deficiencies that could be directly linked to development of middle housing. While there are some infrastructure issues in the City, and some planned improvement projects, there was not enough evidence to demonstrate that those infrastructure issues would be impacted or made worse by the incremental increase in middle housing units.

Policy Choices for Council Consideration

The team requests the Council provide direction on the following policy choices:

- **IBTER Application:** The consultant team does not recommend filing an IBTER application. Does the Council concur? It is possible for the team to attempt to prepare an application, but this requires a significant use of resources and it is unlikely to be approved by the state.
- **Code Update – Minimum Lot Sizes:** Should middle housing be allowed on the same/similar sized lots as single-family houses or should larger lots be required? The consultant team recommends same/similar sized lots because it provides the opportunity for middle housing on more sites and because requiring larger lots is not very effective in ensuring that middle housing “fits in” in with existing neighborhoods.
- **Code Update – Design Standards:**
 - Should the City regulate design more strictly than today and apply the same design standards to middle housing and single-family housing? For example, the City does not currently limit the overall size of buildings, require landscaping in front yards, or require garages to be accessed from the side or rear of the lot. These standards would help middle housing blend in with existing neighborhoods. However, under HB 2001, if applied, they must also be required for single-family houses.
 - Should design regulations vary by neighborhood more than they do today? Current zone district boundaries include neighborhoods that can look and feel quite different. Should design standards be tailored to account for these differences, even if it makes the code more complex for staff and applicants?



MIDDLE HOUSING IMPLEMENTATION PROJECT

BACKGROUND REPORT

January 19, 2021
DRAFT



Attachment 2

Table of Contents

SECTION 1: STATE POLICY FRAMEWORK

Executive Summary	1
Overview	2
Administrative Rules and Model Code	2
Definitions: What is Middle Housing?	3
Applicability: Where do the Requirements Apply?	5
Siting: Where Must Middle Housing be Allowed in Applicable Areas?	9
Development and Design Standards: How Can the City Regulate the Form of Middle Housing?	12
Conversions of Single-Family Dwellings to Middle Housing	16

SECTION 2: PLAN AND CODE REVIEW

Executive Summary	18
Overview	19
Summary of Key Issues	19
Comprehensive Plan	19
Woodburn Development Ordinance	20
City of Woodburn Comprehensive Plan	23
A. Comprehensive Plan Designations and Implementation	23
D. Residential Land Development and Housing.....	23
F. Commercial Land Development and Employment	24
G. Growth Management and Annexation.....	25
K. Downtown Design	25
Woodburn Development Ordinance	26
Section 1: Organization And Structure	26
Section 2: Land Use Zoning and Specified Use Standards.....	29
Section 3: Development Guidelines And Standards.....	39
Section 4: Administration and Procedures.....	47
Section 5: Application Requirements	47

SECTION 3: NEIGHBORHOOD PATTERNS ANALYSIS

Executive Summary	50
Background and Purpose	51
Pattern Area: Midcentury Ranch Senior Estates	59
Pattern Area: Conventional Suburban.....	61
Pattern Area: Contemporary Suburban.....	63
Pattern Area: Downtown Historic.....	65
Pattern Area: Mixed-Era Mosaic.....	67
Pattern Area: Midcentury Ranch	69

List of Tables

Table 1. Minimum Compliance Standards: Minimum Lot Size	10
Table 2. Minimum Compliance Standards: Density	11
Table 3. Minimum Compliance Standards for Height, Setbacks, Lot Coverage, and Bulk/Scale.....	13
Table 4. Minimum Compliance Standards - Off-Street Parking Requirements.....	15
Table 5. Analysis of Use Regulations in Residential Zones (based on Table 2.02A).....	30
Table 6. Analysis of Minimum Lot Area Standards	35
Table 7. Minimum Compliance Standards - Off-Street Parking Requirements.....	42

List of Figures

Figure 1. Missing Middle Housing Conceptual Graphic	3
Figure 2. Definitions of Middle Housing Types	3
Figure 3. Same Building Envelope, More and Smaller Units.....	14
Figure 4. Building Height Measurement, WDO	27
Figure 5. Alternative Building Height Measurement, City of Cincinnati Form-Based Code	27
Figure 6. Comparison of WDO and Division 46 Housing Type Definitions	28

SECTION 1

State Policy Framework

Executive Summary

Oregon House Bill 2001 (“HB 2001”) requires the City of Woodburn to allow “middle housing” in most residential zones. Specifically, the City is required to allow duplexes on every lot where a detached single-family dwelling is allowed and to allow triplexes, quadplexes, townhomes, and cottage clusters in areas zoned for residential uses that allow for single-family dwellings.¹ HB 2001 is implemented through Oregon Administrative Rules (OAR 660-046, “Middle Housing”) that are currently being drafted by the Department of Land Conservation and Development (DLCD). The rules include a “Model Code” which Cities may adopt, in whole or in part, to comply with HB 2001.

The administrative rules provide definitions for each of the five (5) middle housing types and specify the number and configuration of dwelling units that the City must allow. The City will need to amend existing definitions and add new definitions to the Woodburn Development Ordinance (WDO) in order to regulate these housing types in compliance with HB 2001.

HB 2001 applies to any zoning district in which (1) residential uses are the primary use and which implements a residential comprehensive plan designation and (2) the zone allows single-family detached dwellings. All five (5) of Woodburn’s residential zones meet this criteria, and the Mixed Use Village (MUV) zone may also be required to comply with HB 2001.

The City may prohibit or limit middle housing in areas that are protected under existing Statewide Planning Goals, infrastructure-constrained areas, and areas protected by other state and federal laws. In Woodburn, this includes the Riparian Corridor and Wetlands Overlay District and the Neighborhood Conservation Overlay District. It is unknown whether any areas in the City will qualify as “infrastructure-constrained” lands. That will be determined through an infrastructure analysis conducted as part of this project (Project B, “Infrastructure-Based Time Extension Request Application”).

The City may regulate the siting and design of middle housing development, within certain parameters. The administrative rules establish “minimum compliance standards”. If the City’s proposed regulations meet these standards, they comply with HB 2001. Generally, the intent of these standards is to ensure middle housing is not subject to significantly more restrictive regulations than single-family detached housing.

The City may depart from minimum compliance standards, but it must submit detailed findings, for review by DLCD, that demonstrate the proposed regulations meet certain criteria. The criteria are intended to ensure middle housing will be allowed broadly in residential zones and that the regulations will not cause “unreasonable cost or delay” for middle housing developments. Meeting these criteria will be complex and approval by DLCD is uncertain, therefore, the project team’s initial recommendation is to meet the minimum compliance standards. This approach will be confirmed in the Code Concepts stage of the project.

¹ ORS 197.758(2)

Overview

House Bill 2001 (HB 2001) is a landmark piece of legislation with far-reaching implications for residential zoning and land use across Oregon. HB 2001 requires cities with populations over 25,000— applicable to the City of Woodburn—to allow duplexes on *every lot* where a detached single-family dwelling is allowed and to allow triplexes, quadplexes, townhomes, and cottage clusters *in areas* zoned for residential uses that allow for single-family detached dwellings.²

Woodburn is one of many communities grappling with the implications of the law. The City desires middle housing be integrated into the existing community fabric while remaining compliant with state rules and providing needed housing options to the community.

The purpose of this section of the Background Report is to provide a concise summary of the requirements associated with complying with HB 2001, as they apply to the City of Woodburn. This section also identifies preliminary options for complying with HB 2001 and discusses some challenges and opportunities associated with each. The section is organized as follows:

- Administrative Rules and Model Code
- Definitions: What is Middle Housing?
- Applicability: Where do the Requirements Apply?
- Siting: Within Applicable Areas, Where Must Middle Housing be Allowed?
- Development and Design Standards: How Can the City Regulate the Form of Middle Housing?

Administrative Rules and Model Code

Administrative Rules

HB 2001 tasked the Department of Land Conservation and Development (DLCD) with creating a set of administrative rules that specify in detail how local governments will satisfy the broad intent of the law. The rules were adopted by the Land Conservation and Development Commission (LCDC) on December 9, 2020. The rules are incorporated as Division 46 of Chapter 660 of the Oregon Administrative Rules (OAR 660-046, “Middle Housing”). These rules will be referred to as “Division 46” or “middle housing rules” in this report.

Model Code

The legislation also tasked DLCD with preparing a Model Code for middle housing.³ The Model

² ORS 197.758(2)

³ The Large Cities Model Code can be found here:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=275556>

Code has two purposes. It serves as both a “benchmark” and a “backstop”:

- **Benchmark:** The Model Code provides a benchmark against which local middle housing regulations can be compared to establish compliance with HB 2001. The administrative rules specify when the provisions of the Model Code will be used as a benchmark for compliance.
- **Backstop:** If a city does not adopt middle housing regulations that comply with Division 46, then the Model Code automatically supersedes any existing, local regulations that apply to middle housing.

Provisions of the Model Code are referenced in this section; however, the primary focus of this report is to outline the requirements of Division 46. The Model Code represents one example of a set of regulations that comply with Division 46, but the City is not required to comply with all provisions of the Model Code.

Definitions: What is Middle Housing?

The concept of middle housing originated in the term “missing middle housing”. The concept generally refers to a wide range of housing types of a scale and density that fall between detached, single-family homes and midrise, 3-5 story apartment buildings (Figure 1). Most contemporary zoning codes only allow middle housing in higher density or multi-family zones, although it is possible to design middle housing to be compatible with single-family dwellings.

Figure 1. Missing Middle Housing Conceptual Graphic



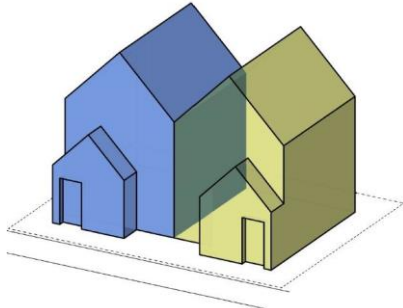
For the purpose of HB 2001, middle housing is more narrowly defined. Middle housing includes duplexes, triplexes, quadplexes, townhomes, and cottage clusters. The definition of each and a illustrative example of the housing type is presented in Figure 2.

Figure 2. Definitions of Middle Housing Types⁴

⁴ OAR 660-046-0020

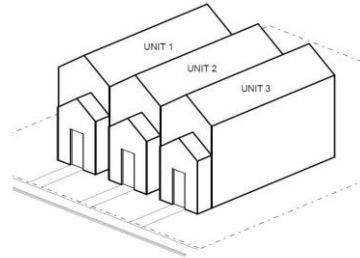
Duplex

Two attached dwelling units on a Lot or Parcel. A Medium or Large City may define a Duplex to include two detached dwellings on *one lot*.



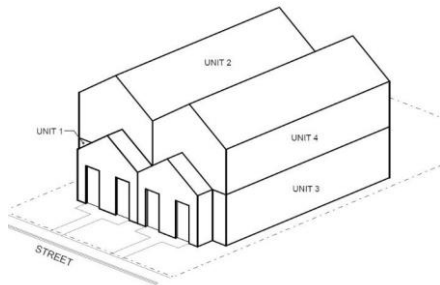
Triplex

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 dwellings on *one lot*.



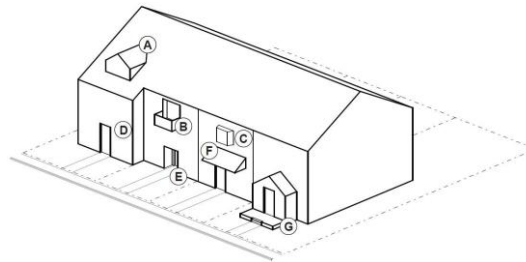
Quadplex

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 dwellings on *one lot*.



Townhouse

A dwelling unit that is part of a row of two or more attached dwelling units, where each unit is located on *its own lot* and shares at least one common wall with an adjacent dwelling.



Cottage Cluster

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.⁵ A Medium or Large City* may allow Cottage Cluster dwellings to be located on *a lot or with each dwelling on a lot*.

*Woodburn falls into the Large City category.

Number and Configuration of Units

Division 46 also further specifies the number of units and configurations of units for each middle housing type that cities must allow.⁶

⁵ This definition in the OAR conflicts with a later provision, which requires the City to set a *maximum* building footprint of 900 square feet. The definition requires the footprint to be *less than* 900 square feet. The project team will notify DLCD of this conflict.

⁶ OAR 660-046-0205(4)

- **Duplex:** Must allow two (2) attached units, but may allow units to be detached. May also allow an ADU with a duplex.
- **Triplex:** Must allow three (3) attached units, but may allow units to be detached. May also allow an ADU with a triplex.
- **Quadplex:** Must allow four (4) attached units, but may allow units to be detached. May also allow an ADU with a quadplex.
- **Townhouses:** Must require two (2) attached units in a townhouse project and must allow at least four (4) units in a townhouse project.
- **Cottage Cluster:** Not required to establish a minimum number of units, but if a minimum is established, it must not be greater than five (5) units in a cluster. Must also allow up to eight (8) units to be oriented around a single, common courtyard. The City must allow the units to be on one lot, but may also allow the units be on individual lots (subdivided).

Applicability: Where do the Requirements Apply?

Residential Zones that Allow Single-Family Dwellings

Division 46 applies to any zoning district in which (1) residential uses are the primary use and which implements a residential comprehensive plan designation and (2) the zone allows single-family detached dwellings.⁷ Division 46 *does not apply* to any of the following areas:

- **Non-Residential Zones:** Districts zoned primarily for commercial, industrial, agricultural, or public uses.
- **Residential Zones that Prohibit Single-Family Detached Dwellings:** If a zone district does not permit single-family detached dwellings, then it does not need to comply with Division 46.
- **Unincorporated Areas.** Lands that are not incorporated and that are zoned under an interim zoning designation that maintains the land’s potential for planned urban development. These are also known as “holding zones”.

In Woodburn, this means that Division 46 applies to lands in the following zones:

- Residential Single Family (RS)
- Nodal Single Family Residential (RSN)
- Retirement Community Single Family Residential (R1S)
- Medium Density Residential (RM)
- Nodal Multi-Family Residential (RMN)

⁷ OAR 660-046-0010(2)

Note that some lands outside of the City of Woodburn, but within the Woodburn Urban Growth Boundary (UGB), are designated under a residential Comprehensive Plan designation and are planned for future residential use. These lands are not subject to Division 46 until they are annexed to the City and designated under a residential zone that allows single-family detached dwellings.

Allowed Limitations: Constrained Areas

Division 46 will allow the City to prohibit or limit middle housing in areas that are protected under existing Statewide Planning Goals, infrastructure-constrained areas, and areas protected by other state and federal laws.⁸ In Woodburn, this includes the following areas:

- **Riparian Corridor and Wetlands Overlay District.** This overlay district is intended to protect land under Statewide Planning Goal 5: Natural Resources (primarily wetlands and stream corridors) and Goal 7: Natural Hazards (flood zones). The City may limit or prohibit middle housing in this district, under certain conditions. See the Plan and Code Review for a more detailed discussion.
- **Neighborhood Conservation Overlay District.** This overlay district is intended to protect land under Statewide Planning Goal 5: Historic Resources. The City may limit middle housing in this district, under certain conditions. See the Plan and Code Review for a more detailed discussion.
- **Infrastructure-Constrained Lands:** There may be areas in Woodburn that qualify as “infrastructure-constrained” and therefore the City may limit or prohibit middle housing under certain conditions. This project includes conducting an analysis to determine which, if any, areas may eventually be designated as Infrastructure-Constrained. If there are areas which may qualify, then the City will submit an Infrastructure-Based Time Extension Request (IBTER) to defer compliance with Division 46 until the infrastructure issues can be remedied.

Allowed Limitation: Master Planned Communities

Division 46 allows large cities to treat Master Planned Communities somewhat differently than other residentially zoned areas.⁹ These areas are typically on the urban fringe, or even large infill parcels, and may be called “master plans”, “specific plans”, or “area plans”. Local governments often design and scale public facilities based on these master plans in order to fit the intensity of use. A city could face significant problems if facilities are designed to serve a certain number of dwelling units were instead developed with up to four times those number of units (replacement of expected single-family development with quadplex or townhome development, for example).

Master Planned Communities include any site that meets either of the following criteria:

⁸ OAR 660-046-0205(2)

⁹ OAR 660-046-0205(2)(c)

- **Adopted or Proposed Master Plan:** A site over 20 acres that is within the City of Woodburn or the UGB and that has either adopted or proposed to adopt a master plan.
- **Future Master Plan Areas:** Any site that is added to the Woodburn UGB after January 1, 2021 for which the City proposes to adopt a master plan.

If the site meets the definition of a Master Planned Community, then the City may regulate middle housing development as follows:

- **Existing Master Plans – Developed Areas:** In *developed areas* within an existing master plan, the City may not restrict future redevelopment or conversion of single-family dwellings to any middle housing type.
- **Existing Master Plans – Undeveloped Areas:** In *undeveloped areas* within an existing master plan, the City may limit middle housing other than duplexes to certain areas or lots, so long as the City permits an overall net density of at least eight (8) units per acre. Duplexes must be permitted on every lot where single-family dwellings are permitted.
- **Future Master Plans:** The City may not limit the location of any middle housing types, but it may limit overall new density to no less than 15 dwelling units per acre. Additionally, the City is required to plan to provide urban water, sanitary sewer, stormwater, and transportation systems that accommodate at least 15 units per acre in the Master Planned Community. If an applicant proposes densities exceeding those assumed for infrastructure planning purposes, the City may require the applicant to demonstrate there are sufficient public services for the development.

Some areas in the Woodburn may meet the definition of a Master-Planned Community. There are three (3) Planned Unit Developments (PUDs) that are over 20 acres which could be classified as a Master Planned Community:

- Links at Tukwila Phase IV
- Boones Crossing
- Smith Creek

Each of these PUDs includes some undeveloped areas. As noted above, these areas are not subject to the general Division 46 requirements but must the City must meet the special provisions for existing, previously approved Master Planned Communities. As such, the City must allow these previously approved PUDs to be amended by the applicant to allow for (1) an overall net density of at least 8 dwelling units per acre and (2) allow for the development of a duplex on every lot. It is unclear if the three previously approved PUDs would allow for at least 8 dwelling units per acre, and none of the PUDs included an allowance for a duplex on every lot.

To implement this change, it is recommended that the City amend WDO Section 3.09.07 (Modifications to an Approved Detailed Development Plan) to identify that any previously approved PUD can be amended to use these Master Planned Community allowances.

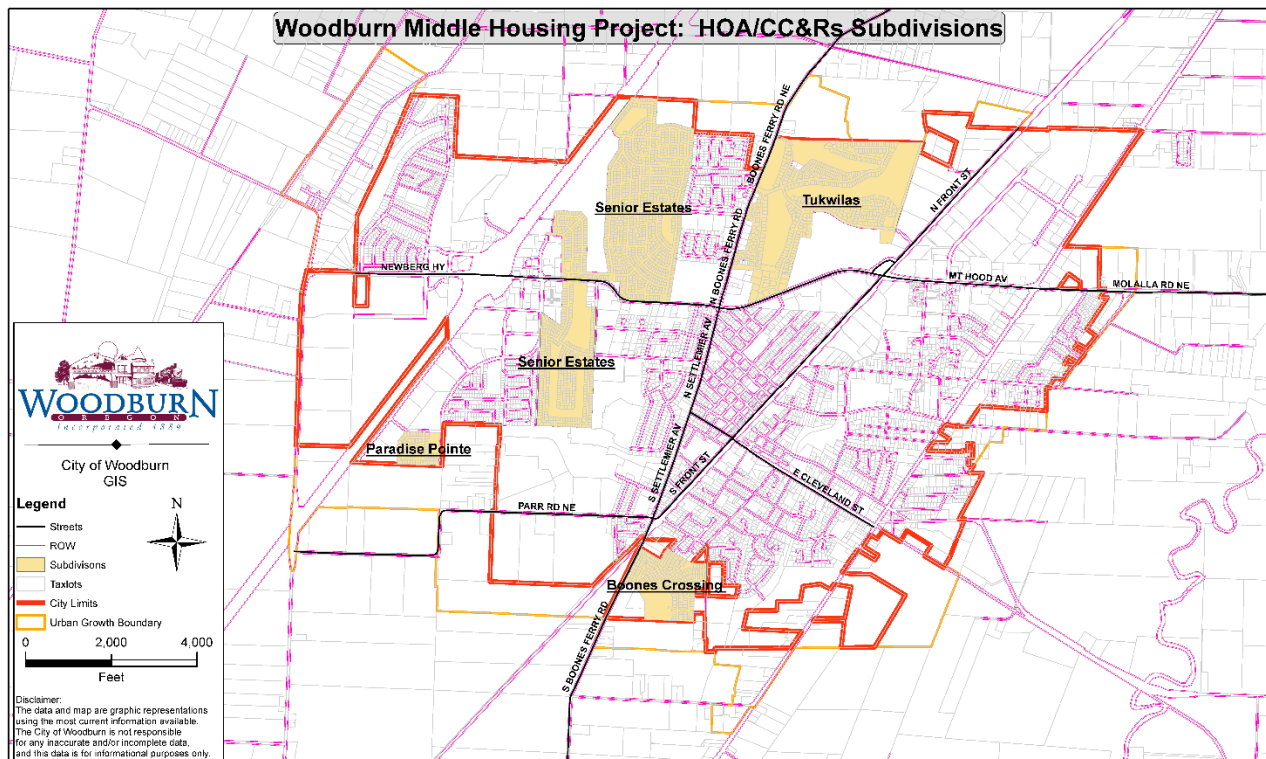
Note: Properties Subject to Covenants, Conditions, and Restrictions (CC&Rs)

Division 46 does not invalidate any existing, private Covenants, Conditions, and Restrictions (CC&Rs) or other deed restrictions which may have the effect of limiting or prohibiting middle housing development. CC&Rs are common in larger subdivisions and master planned neighborhoods, which also often have a Home Owners Association (HOA). There are at least four (4) such neighborhoods in Woodburn: Senior Estates, Tukwila, Paradise Pointe, and Boones Crossing (see Figure 3).

In many communities, it is common for CC&Rs to include a restriction on duplexes, accessory dwelling units and other forms of multi-family development. At this stage, it is unknown which, if any, neighborhoods in Woodburn are subject to such restrictions. If available, this information will be incorporated into the Code Concepts to provide context about the likely impacts of middle housing code changes.

House Bill 2001 does include a provision to prohibit *future* CC&Rs or other deed restrictions (recorded after the passing of the bill) from prohibiting middle housing on properties that would otherwise allow single-family dwellings.

Figure 3. Neighborhoods with HOAs/CC&Rs



Siting: Where Must Middle Housing be Allowed in Applicable Areas?

Within the areas where Division 46 applies, the City has some discretion in regulating where and how middle housing can be developed. Conventionally, the locations and lots where middle housing types are allowed have been regulated either through minimum lot size and maximum density standards or through location-based criteria, such as limiting a certain housing type to corner lots or higher classification streets.

Division 46 does not provide discretion to the City to limit the location of duplexes. The City must allow duplexes on every lot where a single-family detached dwelling is allowed, including any existing, non-conforming lots where a single-family detached dwelling would be allowed.

For all other middle housing types, Division 46 provides the City with two “tracks” for regulating where middle housing can be developed:

- **Track 1: Minimum Compliance Standards for Lot Size and Density.** The City may adopt minimum lot size and maximum density standards that meet a set of minimum compliance standards that are established in Division 46. These standards are summarized below.
- **Track 2: Performance Metrics.** In lieu of meeting the minimum compliance standards, the City may apply different minimum lot size, maximum density, or other location-based restriction to middle housing so long as the City can demonstrate it meets certain performance metrics. These metrics are summarized below.

Track 1: Minimum Compliance - Lot Size and Density Standards

The intent of HB 2001 is to allow middle housing types broadly in all residential areas, including neighborhoods of predominantly single-family housing. Some of the most common barriers to development of middle housing in single-family zones are minimum lot size and maximum density standards. It is typical for the minimum lot size for a duplex, triplex, or quadplex to be higher than the minimum lot size for a single-family house. This appears logical if one assumes that the density on any one lot must be relatively similar across housing types.

However, an underlying premise of HB 2001 is that these types of restrictive density regulations effectively prohibit needed forms of smaller, more affordable housing and increase the cost of housing. They do so by restricting the number of lots where middle housing can be developed and by requiring more land area than is necessary to accommodate the housing.

Although middle housing types are more dense than most single-family housing, the potential impacts associated with this density are easier to mitigate for middle housing types than for larger, multi-family housing. By definition, middle housing types are limited in the number of units allowed on one lot, and the scale of middle housing can be regulated to be compatible with single-family dwellings by applying certain standards.

For these reasons, the minimum compliance standards of Division 46 establish relatively

stringent limitations on minimum lot sizes that a city can apply to middle housing. For triplexes, quadplexes, and cottage clusters, the minimum lot size cannot be greater than the minimum lot size that is applied to single-family dwellings, unless the minimum lot size for a single-family dwelling is lower than 5,000-7,000 square feet (see Table 1). Minimum lot sizes for townhomes must be no greater than 1,500 square feet per townhome unit on average, meaning the City can apply different lot sizes for interior, corner, or exterior lots so long as the average of these minimum is no greater than 1,500 square feet

Table 1. Minimum Compliance Standards: Minimum Lot Size¹⁰

Single family min lot size equals...	Min lot size must be no greater than...				
	Duplex	Triplex	Quadplex	Cottage Cluster	Townhomes
Less than 5,000 sf	No greater than SF min lot size	5,000 sf	7,000 sf	7,000 sf	1,500 sf per townhome on average
5,000 - 7,000 sf		No greater than SF min lot size			
7,000 sf or higher			No greater than SF min lot size	No greater than SF min lot size	

Similarly, the minimum compliance standards for density ensure that maximum density standards would not effectively preclude middle housing on many lots (Table 2). Duplexes, triplexes, quadplexes, and cottage clusters are exempt from maximum density standards. Cities must also set a *minimum* density for cottage clusters of at least four dwelling units per acre to ensure they meet the intent of HB 2001 to provide an alternative, compact housing option.

For townhomes, the maximum density standard must be at least four (4) times the maximum density applied to single-family dwellings. This is because cities must allow at least four (4) attached townhome units in any townhome project. Thus, the standard effectively requires cities to allow a 4-unit townhome project on the same size lot as a single-family dwelling.

¹⁰ OAR 660-046-0220

Table 2. Minimum Compliance Standards: Density¹¹

	Duplex	Triplex	Quadplex	Cottage Cluster	Townhomes
Exemption or limitation on density standards	Exempt from max density	Exempt from max density	Exempt from max density	Min density must be at least 4 units/acre Exempt from max density	Max density must be 4 times the max density applied to single-family dwellings, or 25 units per acre, whichever is less

Track 2: Performance Metrics

As an alternative to the minimum compliance standards, a city may elect to demonstrate compliance with Division 46 by showing that its proposed middle housing standards effectively allow for middle housing broadly in residential areas. This is termed the “performance metrics” track.

Under this track, the City of Woodburn would develop its own set of minimum lot size, maximum density, and other location-based criteria that it proposes to apply to middle housing types (other than duplexes). Then, the City would conduct an analysis to apply the proposed standards to existing lots. The analysis must demonstrate that the proposed standards meet two “tests”.¹²

- **Minimum Share Test.** The proposed standards must allow for middle housing on minimum percentage of lots within all applicable residential zones, excluding lots where the city does not allow the housing type due to natural hazards, infrastructure deficiencies, or on lots in master-planned areas.
- **Equitable Distribution Test.** The proposed standards must allow at least one middle housing type on 75% of all applicable lots within each Census Block Group.

Compared to the Minimum Compliance Standards Track, the Performance Metrics Track offers the City more flexibility in regulating where middle housing can be developed. *However, Track 2 would require a more complex analysis, would be subject to more scrutiny by DLCD to ensure the proposed standards meet the Division 46 rules, and would require ongoing monitoring to ensure that future code updates do not render the City out of compliance.*

The default is Track 1. It is recommended that the City engage the public and policymakers to more fully understand goals and concerns related to middle housing. The appropriate track will be confirmed in the Code Concepts stage.

¹¹ OAR 660-046-0220

¹² OAR 660-046-0205(3)(b)

Development and Design Standards: How Can the City Regulate the Form of Middle Housing?

A key intent of HB 2001 is that middle housing types not only be theoretically allowed in residential zones, but be subject to standards that generally support the economic feasibility and relative attractiveness of building middle housing. The bill requires that local regulations “do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay.”¹³

Beyond the minimum lot size and density standards discussed above, a host of other development and design standards can present unnecessary barriers to middle housing and increase the cost of housing. These standards may include minimum off-street parking requirements, minimum setbacks, maximum height, maximum lot coverage, and architectural design standards, among others.

Similarly to lot size and density standards, Division 46 presents the City with two tracks for applying development and design standards that satisfy the intent of HB 2001 to middle housing types other than duplexes. Duplex standards must meet the minimum compliance standards presented below and are not eligible for Track 2.

- **Track 1: Minimum Compliance Standards.** The City may adopt development and design standards that meet a set of minimum compliance standards that are established in Division 46. These standards are summarized below.
- **Track 2: Alternative Design and Development Standards.** In lieu of meeting the minimum compliance standards, the City may apply alternative design and development standards, but the City must produce findings to demonstrate that the proposed standards will not cause “unreasonable cost or delay” to middle housing development.¹⁴

Track 1: Minimum Compliance – Development and Design Standards

Height, Setbacks, Lot Coverage, and Bulk and Scale

Maximum height, minimum setbacks, maximum lot coverage, and other related standards, establish the basic building envelope on a given lot. They affect the placement and scale of a building in relation to its lot. The standards also affect the amount of floor area it is feasible to build and, in turn, the maximum size of the dwelling unit(s) in the building. Thus, these standards affect both visual compatibility and economic feasibility.

The minimum compliance standards for these regulations generally prohibit cities from applying more restrictive standards to middle housing than single-family dwellings (see Table

¹³ ORS 197.758(5)

¹⁴ OAR 660-046-0235

3). An underlying premise of the rules is that middle housing types can be constructed within a similar building envelope as a single-family dwelling, but the units would be smaller (see Figure 4 for an illustration of this concept). This is likely to produce middle housing projects that are more compatible with the basic form and scale of single-family dwellings. Additionally, smaller dwelling units also tend to be more affordable units, so allowing more units within a similar building envelope is consistent with the overall intent of HB 2001 to provide more affordable housing options.

Table 3. Minimum Compliance Standards for Height, Setbacks, Lot Coverage, and Bulk/Scale Limits¹⁵

Standard	Limitations of Middle Housing Rules				
	Duplex	Triplex	Quadplex	Cottage Cluster	Townhomes
Max Height	No lower than single-family	No lower than single-family <u>and</u> no lower than 25 ft or 2 stories		None	No lower than single-family and if covered parking is required, no lower than 3 stories
Min Setbacks	No greater than single-family			Perimeter: no greater than single-family or 10 ft Between cottages: no greater than 10 ft	Overall structure: no greater than single-family Between units: must allow zero foot side setbacks
Max Lot Coverage or other Bulk and Scale Limits	No less than single-family			Exempt, but must apply max building footprint of 900 square feet	No less than single-family if applied to the overall structure

¹⁵ OAR 660-046-0220

Figure 4. Same Building Envelope, More and Smaller Units

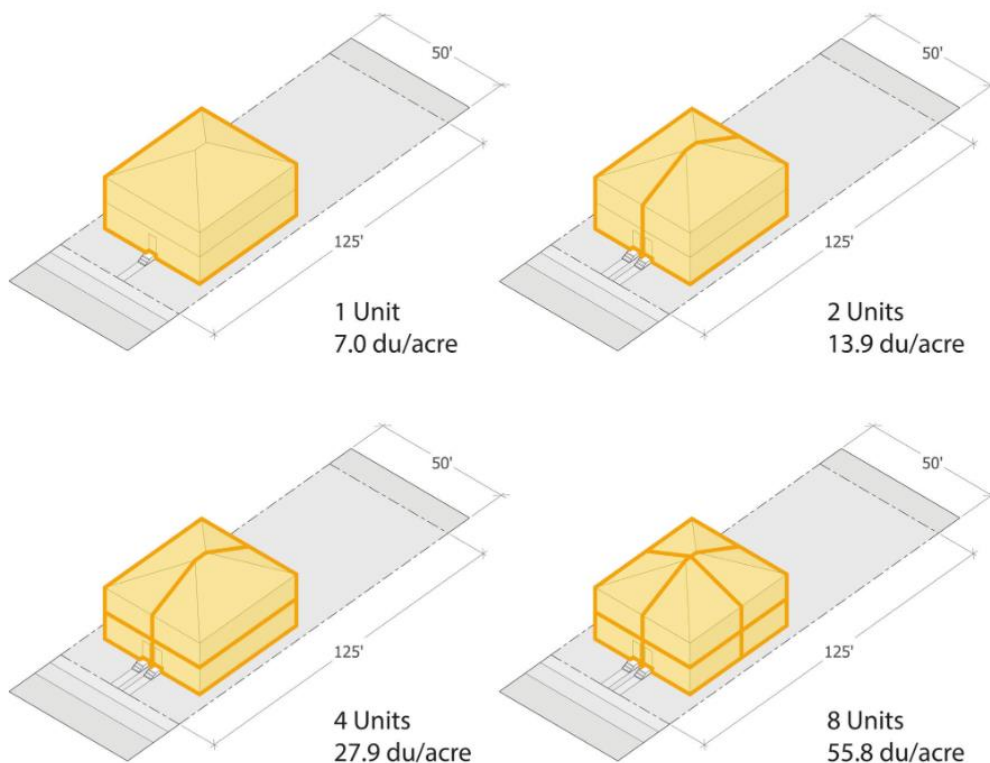


Image Source: Opticos Design

Off-Street Parking

Alongside lot size and density restrictions, minimum off-street parking requirements have typically been one of the most significant barriers to developing middle housing types. Off-street parking, whether in a garage or surface lot, consumes site area that may otherwise be used for housing, and constrains design options on a site. Dedicating site area and constructing improvements needed for parking adds to the cost of housing development and, in some cases, can render a project economically infeasible.

To address this issue, the Division 46 minimum compliance standards for off-street parking limit the number of parking spaces that a city may require for each middle housing type. Generally, the standards equate to requiring no more than 1 space per dwelling unit in most instances. For triplexes and quadplexes on smaller lots, the standards set a lower limit depending on the size of the lot (Table 4).

Table 4. Minimum Compliance Standards - Off-Street Parking Requirements¹⁶

Lot size of the development site equals...	Minimum off-street parking requirements must be no greater than...				
	Duplex	Triplex	Quadplex	Cottage Cluster	Townhomes
Less than 3,000 sf	2 spaces (total)	1 space (total)	1 space (total)	1 space per unit	1 space per unit
3,000 - 5,000 sf		2 spaces (total)	2 spaces (total)		
5,000 -7,000 sf		3 spaces (total)	3 spaces (total)		
7,000 sf or greater			4 spaces (total)		

It is important to note that the minimum compliance standards do not limit the number of parking spaces that any particular development may choose to provide on a middle housing site. The standards apply to the City’s *minimum requirements*, not directly to middle housing development. In fact, many developers are likely to exceed the City’s minimum requirement if they perceive that more parking is needed to make the housing more attractive to potential tenants or buyers.

Architectural Design Standards

The minimum compliance standards also set parameters on architectural design standards that can be applied to middle housing types. The intent of these standards is to allow cities to regulate the form and style of middle housing, while ensuring that design standards for middle housing are not more onerous than similar standards applied to single-family dwellings, and do not cause unreasonable costs or delay. Note that the standards do not *require* cities to apply design standards to middle housing.

The minimum compliance standards provide three options for applying design standards to middle housing.¹⁷

- **Model Code:** Adopt the applicable design standards provided for in the Model Code.
- **Less Restrictive than the Model Code:** Adopt design standards that are less restrictive than those provided in the Model Code.
- **Single-Family Standards:** Apply the same clear and objective standards as applied to single-family dwellings. The standards must scale with form-based attributes, not the number of dwelling units. For example, a standard related to the design of entrances may not be required for each entrance to a dwelling unit, but could be required based on the length of a façade.

¹⁶ OAR 660-046-0220

¹⁷ OAR 660-046-0225

Track 2: Alternative Development and Design Standards

In lieu of meeting the above minimum compliance standards, a City may adopt alternative standards (existing or newly proposed), but only through more work.¹⁸ If proposing new standards, the City must submit findings and a detailed analysis demonstrating to DLCDC that the proposed standards will not cause unreasonable cost or delay, including cost of construction, cost of land, availability to acquire land, and the proportionality of these costs with the public benefits of the standard. Note that Track 2 is prohibited for minimum lot size and maximum density provisions.

Conversions of Single-Family Dwellings to Middle Housing

Division 46 requires cities to treat conversions or additions to existing single-family dwellings to create middle housing differently than new development or wholesale redevelopment that results in middle housing. The intent is to not discourage conversions of single-family dwellings by applying standards that, while they may be feasible to comply with on a vacant site, would cause an unreasonable barrier on a site where an existing structure is to be kept and converted or added to.

The rules require cities to provide for the following allowances for conversions of single-family dwellings to middle housing.¹⁹ Unlike the provisions above, there are no alternatives to these requirements.

- **Existing, Non-Conforming Situations:** Cities must allow additions to, or conversion of, single family dwelling, if it *does not increase nonconformance* with an existing, non-conforming standard, unless it is permitted by the to increase non-conformance with the standard. For example, a house which exceeds the maximum lot coverage of the zone may be converted to a duplex, so long as the lot coverage of the structure is not increased.
- **Public Works Exceptions:** If exceptions to public works standards, such as frontage improvement requirements, are allowed for a single-family dwelling, the same exception must also be granted for conversion or addition to a single-family dwelling to create middle housing.
- **Exempt from Design Standards:** Cities are not permitted to apply architectural design standards to middle housing types created through conversion or addition to a single-family dwelling.
- **Existing Single-Family Dwelling in a Cottage Cluster:** Cities must allow for an existing single-family dwelling to be retained in a cottage cluster development, under certain conditions.

¹⁸ OAR 660-046-0235

¹⁹ OAR 660-046-0230

SECTION 2

Plan and Code Review

Executive Summary

The implementation of HB 2001 by the City of Woodburn will require significant amendments to both the Woodburn Comprehensive Plan (“Comprehensive Plan”) and Woodburn Development Ordinance (“WDO”). Broadly, HB 2001 requires the City to reframe its housing policies and land use regulations from a typically binary treatment of housing types (single-family and multi-family) into a more nuanced treatment that integrates middle housing types.

Many policies and regulations that apply to “high density” or “multi-family” housing may need to be amended so they do not apply to middle housing or so they do not regulate middle housing in a more restrictive manner than single-family housing. Conversely, policies and regulations that apply to “low density” or “single-family” will need to be amended to also apply to middle housing or to otherwise integrate middle housing.

The sections of the Comprehensive Plan that require most significant amendments are (A) Comprehensive Plan Designations and (B) Residential Land Development and Housing. The amendments may include changes to mapped designations, revisions to existing goals and policies, and new goals and policies to articulate the City’s general approach to middle housing.

The most significant amendments to the WDO are needed in Section 2.02 – Residential Zones. Allowed uses in all residential zones (Table 2.02A) must be restructured and amended to integrate middle housing types. Significant amendments are needed to minimum lot size and maximum density in all residential zones to satisfy the Minimum Compliance Standards. Minimum lot sizes for duplexes must be reduced from 8,000-10,000 square feet to be equivalent to single-family minimums of 3,600-8,000 square feet. Minimum lot sizes rowhouses must be reduced from 3,000-5,000 square feet to an average of 1,500 square feet. Current minimum lot sizes for triplexes, quadplexes, and cottage clusters are either too high or not clearly defined.

Complying with HB 2001 will also require significant amendments to off-street parking standards (Section 3.05). To satisfy Minimum Compliance Standards, the City would need to reduce current requirements from 2 spaces per dwelling unit to typically no more than 1 space per dwelling unit for middle housing types.

Less significant amendments are needed to other standards that regulate the form and design of middle housing, such as maximum height, setbacks, and architectural design, to satisfy the Minimum Compliance Standards. However, it may be appropriate to make more significant changes to these standards, or adopt new standards, to ensure middle housing meets the City’s goals for architectural design, compatibility, and affordability.

Overview

The purpose of this section of the Background Report is to identify provisions of the Woodburn Comprehensive Plan (“Comprehensive Plan”) and Woodburn Development Ordinance (“WDO”) that are subject to the requirements of OAR 660-046 (“Middle Housing” or “Division 46”). The Plan and Code Review identifies provisions that may need to be, or must be, amended in order to comply with Division 46. The review also identifies provisions that are missing or opportunities to improve the regulations related to middle housing to best implement the City’s broader goals and policies. This memo will help to establish the scope of plan and code amendments that are detailed in later stages of the project.

The memo begins with a summary of key findings and issues that arose from the review. Following this summary, the memo provides a series of tables which list all provisions that may need to be amended, presented in the sequence they are included in the Comprehensive Plan and WDO. The table includes a brief assessment of the amendments that may be needed to comply with Division 46 or identifies opportunities to improve middle housing-related regulations.

Summary of Key Issues

Comprehensive Plan

The Woodburn Comprehensive Plan is described as:

“the controlling land use document for the City and its Urban Growth Boundary (UGB). From a land use perspective, the comprehensive plan is like a state or federal constitution: it provides the legal framework and long-term vision for implementing plans and land use regulations.”

Volume I of the Comprehensive Plan sets out the goal and policies that direct implementation of the WDO and other City land use decisions, including the regulation of residential land uses and housing development. The sections of the Comprehensive Plan that most closely related to HB 2001 are (A) Comprehensive Plan Designations and (B) Residential Land Development and Housing, though several other sections include relevant goals and policies.

The following is a summary of key issues with Comprehensive Plan designations, goals, and policies related to implementation of HB 2001:

- **Use of “Single-Family Zone”:** Several zone districts, Comprehensive Plan designations, goals, and policies use the term “single-family zone” or “single-family area”. Under HB 2001, the City will no longer be allowed to maintain zones which exclusively allow single-family housing, and all residential zones that allow single-family housing will be required to also allow a range of middle housing types. For clarity, it may be appropriate to replace the term “single-family” anywhere it is used to describe an entire zone district or Comprehensive Plan designation. Alternative terms could be “low

density” or “low intensity” zones. Note this issue does not apply to the term “single-family dwelling”, which will remain a permitted use in many, if not all, of Woodburn’s residential zones.

- **Comprehensive Plan Designations.** The scope of this project could include creating new base zones or consolidating existing base zones. If this is proposed, it may also be necessary or advisable to amend Comprehensive Plan designations to accordingly.
- **Revisions to Existing Goals and Policies:** Minor amendments may be needed to existing goals and policies to clarify how they apply to middle housing. See tables below for specific policies.
- **New Goals and Policies:** Implementing HB 2001 will constitute a major shift in the manner in which the City regulates residential development. Accordingly, it is appropriate to draft new goals and policies to articulate the City’s approach and preferences for how middle housing is developed in the City, within the confines of new state law. At a minimum, new policies should address:
 - *Housing Options and Affordability:* How middle housing types present an opportunity provide additional housing options and potentially more affordable housing types. This policy may relate middle housing to the housing needs identified in the Housing Needs Analysis.
 - *Middle Housing in Existing Neighborhoods:* How new middle housing developments should be integrated into existing residential neighborhoods and be compatible with existing neighborhood development patterns.
 - *Middle Housing in Growth Areas:* How middle housing developments should be incorporated into growth and expansion areas on larger sites on the fringe of the City and within the UGB.

Woodburn Development Ordinance

Approach to the Code Review

The primary purpose of this initial review of the WDO is to identify provisions that are subject to HB 2001 and evaluate compliance with the Division 46 middle housing rules. In some cases, as outlined in the State Policy Framework, Division 46 allows for multiple options or “approval tracks” for satisfying the intent of HB 2001. Generally, at this stage of the project, it is only feasible to assess whether the code meets the Track 1 criteria (“Minimum Compliance Standards”) for siting, design, and development standards because the Track 2 option (“Performance Metrics” or “Alternative Design and Development Standards”) requires a detailed spatial or economic analysis. It is not advisable to conduct this analysis until the City has determined that Track 1 approval is not feasible or desirable, and a complete set of proposed middle housing standards is available to evaluate.

Beyond compliance with Division 46, the code review also seeks to identify the following:

- Opportunities to improve existing standards to better address design and compatibility goals related to middle housing;
- Opportunities to reduce unnecessary barriers to middle housing development; and
- Issues caused by redundancy, lack of clarity, or unnecessary administrative complexity.

Key Findings and Issues

The following key issues have been identified through the review of the WDO:

- **Definitions.** The City’s existing definitions of various housing types will need to be revised, and new definitions may be needed, to clarify how middle housing types are defined and to ensure consistency with Division 46 rules.
- **Allowed Uses.** None of the City’s residential zones, which are all currently subject to Division 46, fully comply with the requirements associated with allowed uses.
 - The most significant changes will be required in the Residential Single Family (RS), Nodal Single Family Residential (RSN), and Retirement Community Single Family Residential (R1S) zones, which currently either exclude all middle housing or only allow duplexes on corner lots.
 - The Medium Density Residential (RM) and Nodal Multi-Family Residential (RMN) zones are closer to compliance with Division 46. However, it is not clear that these zones would currently permit cottage cluster housing because this housing type is undefined in the WDO.
- **Development Standards.** None of the City’s residential zones fully comply with the requirements associated with development standards in Division 46.
 - Significant amendments would be needed to minimum lot size, minimum lot width, and maximum density in all residential zones to satisfy the default Track 1 Minimum Compliance Standards.
 - Relatively minor amendments would be needed to maximum height, minimum setbacks, and maximum lot coverage to satisfy the Minimum Compliance Standards, so long as the same or less restrictive standards that apply to single-family dwellings would also apply to middle housing. However, more significant amendments to these standards may be needed to ensure middle housing meets the City’s goals for design, compatibility, and affordability.
- **Overlay Districts.** Generally, the City’s overlay districts do not apply more restrictive standards to middle housing than single-family dwellings. Minor amendments may be needed to the Neighborhood Conservation Overlay District, Nodal Overlay Districts, Riparian Corridor and Wetlands Overlay Districts to ensure compliance.
- **Special Uses.** The special use standards that apply to duplexes must generally be eliminated because they do not comply with Division 46. Minor changes are needed to Accessory Dwelling Unit (ADU) special use standards to clarify whether and how ADUs are allowed on sites with middle housing. Additionally, amendments are needed to

comply with other state requirements that apply to ADUs, and perhaps more significant amendments are appropriate if the City decides to align ADU standards more closely with middle housing standards.

- **Streets, Utilities, and Easements:** Minor amendments are needed to clarify applicability to middle housing and ensure compliance. Additional changes may be appropriate to advance design and feasibility goals related to middle housing, such as to minimum lane widths, width of Public Utility Easements (PUEs).
- **Parking:** Significant amendments are needed to satisfy the Minimum Compliance Standards associated with parking under Division 46. See the Section 1 State Policy Framework document, Off-Street Parking and Table 4 (p. 15).
- **Architectural Design Standards:** Significant amendments are needed to satisfy the Minimum Compliance Standards associated with design standards under Division 46. Alternatively, the City may seek Track 2 approval of existing design standards, but it is unclear that it is feasible to meet the Track 2 criteria which require showing that the standards would not cause “unreasonable cost and delay” to middle housing development. There may also be opportunities to improve existing design standards to better address design issues specific to middle housing types.
- **Application Requirements:** Minor amendments are needed to clarify applicability to middle housing and to ensure compliance with Division 46 rules that require middle housing be subject to the same approval process as single-family dwellings.

City of Woodburn Comprehensive Plan

A. Comprehensive Plan Designations and Implementation

Section	Issue or Revision Needed
Policy Table 1: Comprehensive Plan Designations and Implementing Zoning Districts	<ul style="list-style-type: none"> • If new base zones or Comprehensive Plan designations are proposed or the names are revised (such as to remove references to “single-family), this table will need to be revised. • The minimum lot sizes and maximum densities listed in this table will need to be revised or removed from the Comprehensive Plan (and left to the WDO).
Site Plan Review	Reference to requiring Site Plan Review for “Multi-Family (3+ units)” will need to be revised if definition of multi-family is amended to differentiate it from middle housing types.

D. Residential Land Development and Housing

Section	Issue or Revision Needed
Residential Plan Designations	<ul style="list-style-type: none"> • The descriptions of Medium Density Residential Lands and Low Density Residential Lands may need to be revised to clarify whether each, or both, permit or encourage middle housing types. Middle housing may blur the distinction between Low Density and Medium Density designations. • Description of Low Density residential designation speaks to protecting these “sensitive land uses”. This may be inconsistent with the intent of HB 2001. It may be appropriate to update this to recognize that middle housing will be integrated and may have impacts on the character of single-family areas.
Residential Land Use Goals and Policies	This is an appropriate location to add a new policy that articulates how new middle housing developments should be integrated into existing residential neighborhoods.

Section	Issue or Revision Needed
Policy D-1.3	This policy may need to be revised to reflect that it may be more difficult to achieve "openness and spaciousness" under HB 2001 in the same manner as this policy envisions.
Policy D-1.10	This policy may need to be revised to clarify if middle housing is included in the term "high density areas". If it is, it may be necessary to adjust the language related to buffering and density transitions to reflect that these standards may not be permissible under Division 46.
Housing Goals and Policies	This is an appropriate location to add a new policy to articulate how middle housing types present an opportunity provide additional housing options and potentially more affordable housing types.
Policy Table 2: Needed Housing Types and Implementing Zoning Districts	Significant amendments are needed to reflect compliance with HB 2001 and integrate middle housing. "Needed Housing Types" column should incorporate all middle housing types, remove limitation of duplexes to corner lots. "Implementing Zoning District" column must be revised so middle housing types are allowed in all residential zones where single-family dwellings are allowed.
Policy D-26	It may be appropriate to amend this policy to identify that some middle housing types, particularly cottage clusters and townhouses, will provide affordable homeownership opportunities across all residential zones.
Policy D-27	This policy may be unnecessary if the shown changes have been implemented. It may be more appropriate to generally describe the intent behind the Nodal Development Concept.

F. Commercial Land Development and Employment

Section	Issue or Revision Needed
Policy F-1.10	This policy may need to be revised if the allowed uses/housing types in the Downtown Gateway sub-district of the CG zone are revised to clarify allowances for middle housing.

Section	Issue or Revision Needed
Policy F-1.11	This policy may need to be revised if the allowed uses/housing types in the Mixed Use Village Overlay district are revised are revised to clarify allowances for middle housing.

G. Growth Management and Annexation

Section	Issue or Revision Needed
Growth Management Goals and Policies	This is an appropriate location to add new policy related to how middle housing developments should be incorporated into growth and expansion areas.
Policy G-1.2	It may be appropriate to amend this policy to identify middle housing as a strategy to maximize use of residential land

K. Downtown Design

Section	Issue or Revision Needed
Policy K-7.4	It may be appropriate to revise to clarify how middle housing fits into the policy goals related to residential development in the downtown area.

Woodburn Development Ordinance

Section 1: Organization And Structure

1.02 Definitions

Subsection	Issue or Revision Needed
“Building Height”	<p>The WDO measures building heights to the midpoint of a pitched roof. One technique for ensuring compatibility of middle housing setting a two part height limit: one limit to the bottom of eaves (pitched roof)/top of parapet (flat roof) and another limit to top of ridge (see Figure 5 and Figure 6). This more strictly limits the height of low pitch or flat roof buildings, encourages steeper pitches, and can help ensure a more “house-scaled” building.</p>
“Dwellings”	<p>Several amendments or additions will be needed to integrate middle housing types, differentiate them from existing housing types in some cases, and ensure compliance with Division 46 (see Figure 7).²⁰</p> <ul style="list-style-type: none">• Single-Family Dwelling: Need to add definition for Cottage Cluster and differentiate from Single-Family Dwelling. City can elect to allow cottage clusters on a single lot or individual lots.• Duplex: WDO defines as two units in one building (attached). Division 46 allows for attached or detached. City may elect to allow detached as well.• Row House: WDO defines as three or more attached units on own lot. Division 46 (uses “Townhouse” term) requires that City must only require two attached units and must allow for at least four attached units in a townhouse project. Amendments needed for clarity.• Multiple Family Dwelling: WDO defines as a building containing three or more units. This definition would include triplexes and quadplexes. It may be necessary to amend this definition to differentiate triplexes and quadplexes, either as a subtype of Multi-Family Dwelling or a separate type(s) altogether.• Medium Density Residential: This term includes multi-family dwellings, as well as a nursing home, or group care facility. Under the definition of multi-family dwelling, this would also include a

²⁰ OAR 660-046-0020

triplex or quadplex. It may be necessary to amend this definition to exclude these middle housing types.

Figure 5. Building Height Measurement, WDO

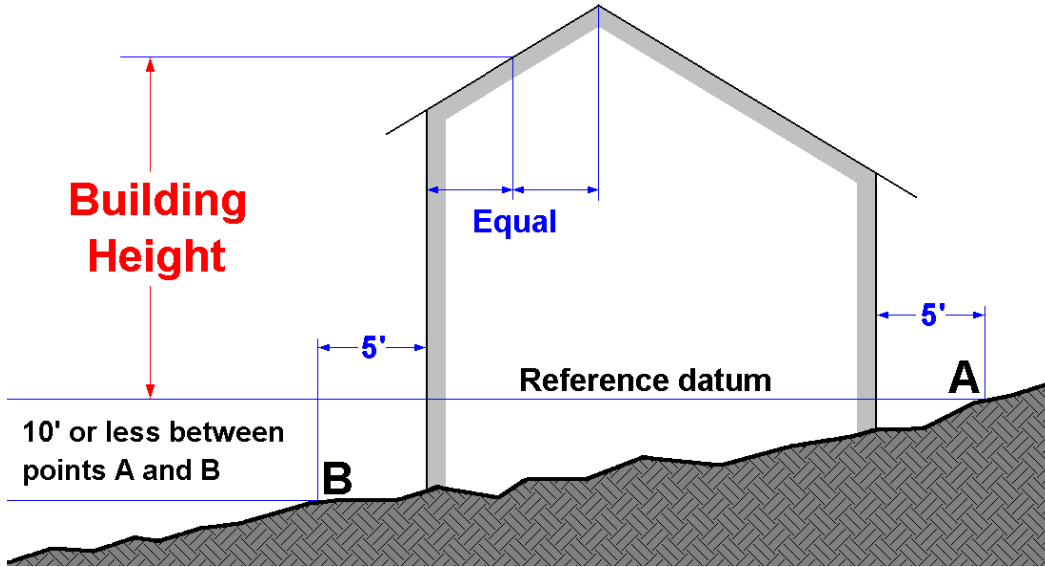
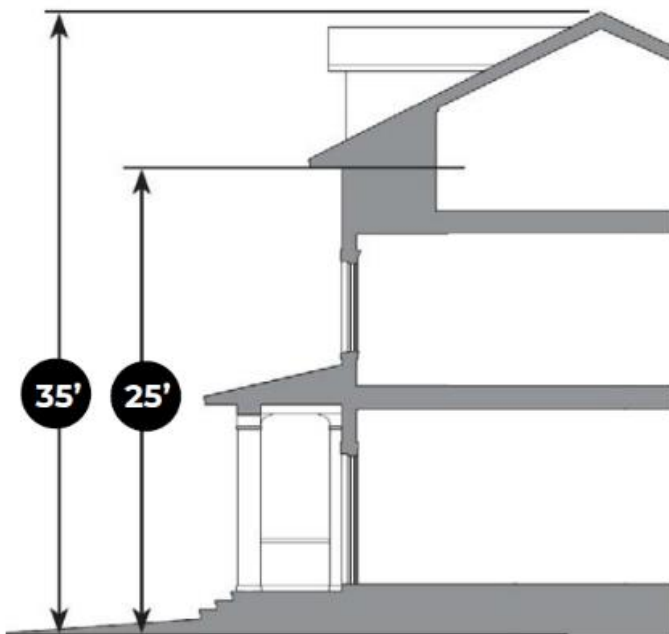
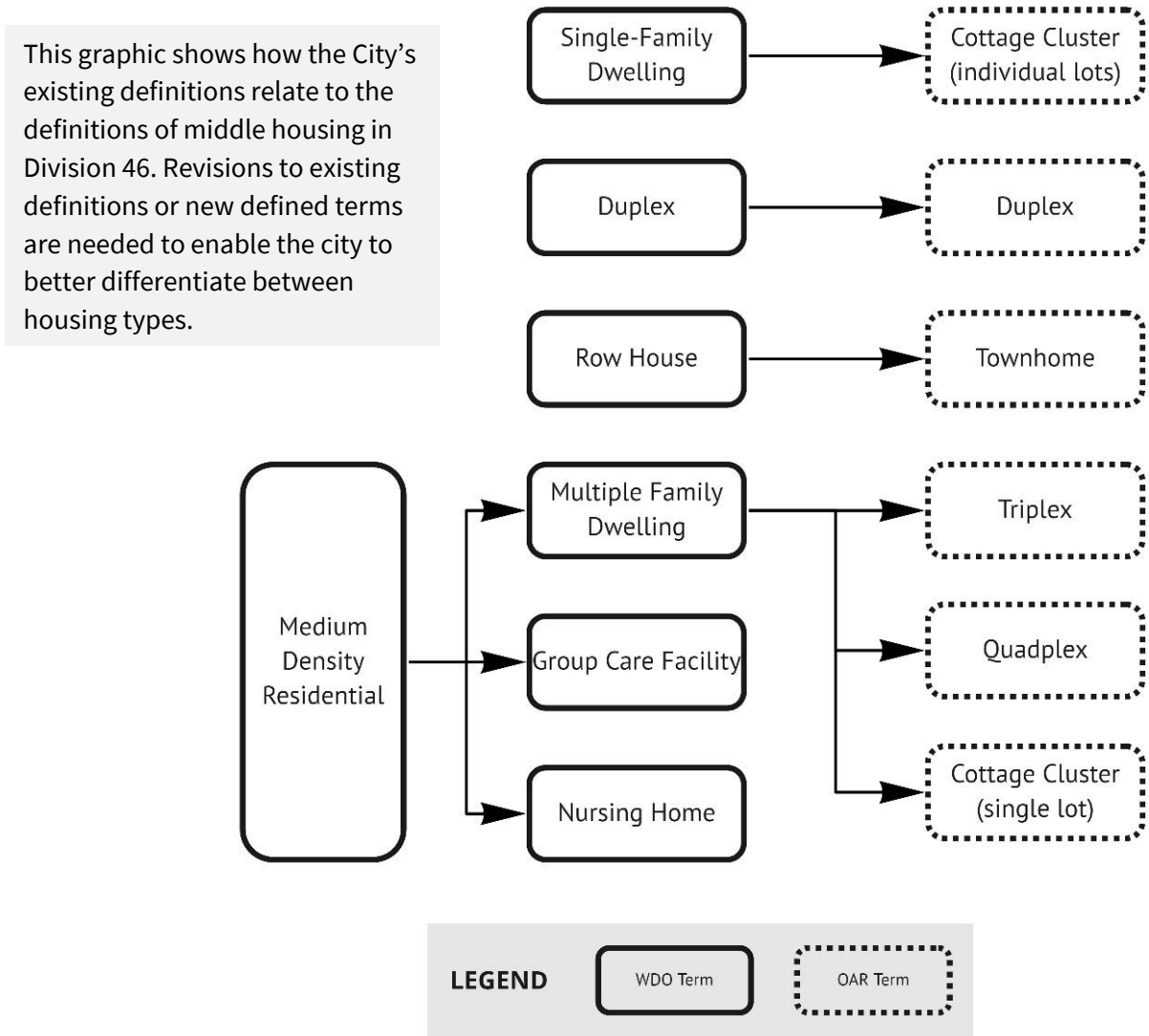


Figure 6. Alternative Building Height Measurement, City of Cincinnati Form-Based Code



This two-part approach to maximum height more strictly limits the height of low pitch or flat roof buildings, encourages steeper pitches, and can help ensure a more “house-scaled” building.

Figure 7. Comparison of WDO and Division 46 Housing Type Definitions



1.04: Nonconforming Uses and Development

Subsection	Issue or Revision Needed
1.04.02: Change or Expansion of an Existing Use with Nonconforming Parking, Loading and/or Landscaping	This standard could require upgrading substandard house parking when a house is converted to middle housing, a concern for houses that are old enough and/or on smaller lots that they fail to conform to the City’s existing parking standards, which require two (2) spaces per dwelling and typically located in a garage. It may be appropriate to provide relief from this standard for certain sites.

<p>1.04.03: Change or Expansion of an Existing Use within a Nonconforming Structure</p>	<p>1.04.03A requires expansions or additions to not increase nonconformance with certain development standards. This is permissible under Division 46, however, the City may consider providing some relief from this standard for certain sites or situations. This issue also affects ADU development.</p> <p>1.04.03B generally exempts expansions or additions to single-family dwellings from architectural guidelines and standards. To comply with Division 46, this allowance must be broadened to exempt all middle housing types that are created through a conversion or addition to single-family dwelling.²¹</p>
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Section 2: Land Use Zoning and Specified Use Standards

2.02 Residential Zones

Subsection	Issue or Revision Needed
<p>2.02A (descriptions of residential zones)</p>	<ul style="list-style-type: none"> • RS, RSN, and R1S: These descriptions must be revised to reflect intent of HB 2001 to allow for a variety of middle housing types in addition to single-family dwellings in all residential zones. • RM and RMN: May need to revise descriptions to clarify the role of middle housing in these zones.
<p>Uses Allowed in Residential Zones Table 2.02A</p>	<p>These use regulations are assessed for compliance with Division 46 in Table 5.</p>

²¹ OAR 660-046-0230

Table 5. Analysis of Use Regulations in Residential Zones (based on Table 2.02A)²²

Dwelling (WDO Terms)	Applicable Middle Housing Type (OAR Division 46 Terms)	Zone					Notes
		RS	RSN	R1S	RM	RMN	
Accessory dwelling unit	N/A	S	S	S	S	S	Division 46 does not pertain to ADUs.
Duplex dwelling	Duplex	S	S	S	P	P	<ul style="list-style-type: none"> RS/RN: Duplexes must be subject to same design and development standards as single-family dwellings. See audit of Special Use standards (Section 2.07) R1S: Duplexes must be allowed on every lot where single-family detached is allowed.
Manufactured dwelling	N/A	S ¹	S ¹	S	S	S	Division 46 does not pertain to manufactured dwellings.
Manufactured dwelling park	N/A				S	S	
Multiple-family dwelling	<ul style="list-style-type: none"> Triplex Quadplex Cottage Cluster (single lot) 				P	P	RS/RN/R1S: Triplex, Quadplex, and Cottage Clusters must be allowed in some areas.
Row houses	<ul style="list-style-type: none"> Townhouse 				P	P	RS/RN/R1S: Townhouses must be allowed in some areas.
Single-family detached dwellings	Cottage Cluster (individual lot)	P	P	P	P	P	If Cottage Clusters with units on individual lots were classified as “single-family detached dwellings” in the WDO, then this would comply. A separate term may be necessary to clarify the distinction.
Legend	Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)						
		Does not comply with Division 46		May not comply with Division 46		Complies with Division 46	

²² Analysis of compliance based on OAR 660-046-0205

Development Standards (Tables 2.02B-F)

The residential development standards were reviewed to assess if they satisfy the Minimum Compliance Standards of Division 46. The review is summarized by development standard type in the first column below, with notes on the potential amendments needed in each zone in the second column.

Development Standard	Issue or Revision Needed (By Housing Type and Zone)
Minimum Lot Area	<ul style="list-style-type: none"> • A summary of the review of minimum lot area standards is provided in Table 6. • Duplexes: Min lot area is higher for duplexes than single-family dwellings wherever duplexes are allowed. Must be reduced to be equivalent or less than single-family standard.²³ • Triplex: Currently, a triplex would be subject to the multi-family minimum lot area standards. Based on existing single-family standards, min lot area for a triplex would need to be the following to satisfy minimum compliance.²⁴ <ul style="list-style-type: none"> ○ RS and RM: No greater than single-family standards because all single-family standards exceed 5,000 sf ○ R1S: May exceed single-family standard of 3,600 sf but may not greater than 5,000 sf ○ RSN and RMN: May exceed single-family interior standard of 4,000 sf but no greater than 5,000 sf. On corner lots, must not exceed current standard of 5,000 sf. <p>(See the Section 1 State Policy Framework document, Table 1 on p. 10)</p> • Quadplex and Cottage Cluster: Currently, a quadplex would be subject to the multi-family minimum lot area standards and it is unclear what standard would apply to cottage cluster because that housing type is undefined. Based on existing single-family standards, min lot area for a quadplex or cottage cluster would need to be the following to satisfy minimum compliance.²⁵ <ul style="list-style-type: none"> ○ RS: May exceed single-family interior standard of 6,000 sf but no greater than 7,000 sf. On corner lots, must not exceed current SF standard of 8,000 sf.

²³ OAR 660-046-0220(1)

²⁴ OAR 660-046-0220(2)(a)(A)

²⁵ OAR 660-046-0220(2)(a)(B) and (4)(a)

Development Standard	Issue or Revision Needed (By Housing Type and Zone)
	<ul style="list-style-type: none"> ○ RSN and RMN: May exceed single-family standards of 4,000 sf (interior) and 5,000 sf (corner), but not greater than 7,000 sf. ○ R1S: May exceed single-family standard of 3,600 sf but not greater than 7,000 sf but not greater than 7,000 sf ○ RM: Existing standard that applies to multi-family would comply. ● Townhouses: <ul style="list-style-type: none"> ○ There is no existing min lot area for townhouses in the RM zone. This satisfies minimum compliance for that zone. ○ In the RSN and RMN zones, the min lot area must be reduced to no greater than an average of 1,500 sf to meet minimum compliance.²⁶ ○ In the RS and R1S, townhouses must be permitted and min lot area set to no greater than an average of 1,500 sf to meet minimum compliance.
Minimum Lot Width and Depth	<ul style="list-style-type: none"> ● Generally, Division 46 does not regulate minimum lot width and depth, but current standards will need to be amended to be consistent with the minimum lot area standards. ● However, the minimum compliance standards do require the minimum lot width for a cottage cluster be not greater than minimum lot width that applies to single-family.
Minimum Street Frontage	<p>Generally, Division 46 does not regulate minimum street frontage, except for townhouses, for which it must not be greater than 20 feet to satisfy minimum compliance.²⁷ The only standard that currently complies is the interior lot standard in the RMN zone, which is 20 feet. All other standards range from 24-50 feet.</p>
Minimum Setbacks	<ul style="list-style-type: none"> ● Relatively minor amendments would be needed to minimum setbacks to satisfy the Minimum Compliance Standards, so long as the same or less restrictive standards that apply to single-family dwellings would also apply to middle housing.²⁸

²⁶ OAR 660-046-0220(3)(a)

²⁷ OAR 660-046-0220(3)(c)

²⁸ OAR 660-046-0220(2)(c) and (3)(d) and (4)(d)

Development Standard	Issue or Revision Needed (By Housing Type and Zone)
	<ul style="list-style-type: none"> • In all zones, no setback that applies to cottage clusters can be greater than 10 feet.²⁹ An exception to front and rear setbacks for cottage clusters would need to be allowed in most zones. • In all zones, there must be an exception to side setbacks on lot lines between attached townhouse units. • In the RM and RMN zones, different setbacks are applied to duplexes, multi-family dwellings, and row houses than single-family dwellings. These standards must be equivalent or less than the standard applied to single-family dwellings. • Tiered Rear or Side Setbacks: In several zones, rear or side setbacks are tiered based on building height and abutting zone. Staff reports these setbacks have been a major challenge for additions to existing homes. They would be also be a significant barrier to some middle housing types. Consider alternative approaches, such as only applying the deeper setback to upper floors, using a maximum FAR to address this concern, or adopting a maximum “bulk plane” standard.
Minimum Density	<ul style="list-style-type: none"> • Division 46 does not regulate minimum density, except as applied to cottage clusters, which must be subject to a minimum density standard of at least four (4) units per acre in all zones.³⁰ • The R1S zone currently does not have a minimum density. In the RMN zone, it is unclear if a minimum density standard would apply to cottage clusters.
Maximum Density	<ul style="list-style-type: none"> • Duplex, triplex, quadplex, cottage cluster must all be exempt from maximum density.³¹ This affects current maximum density standards in the RM and RMN zones. • Townhouses must be permitted at a minimum of four (4) times the maximum density of a single-family dwelling in the same zone, or 25 units per net acre, whichever is less.³² The only zone that currently applies a maximum density to townhouses is RSN

²⁹ OAR 660-046-0220(4)(d)

³⁰ OAR 660-046-0220(4)(c)

³¹ OAR 660-046-0220(1); OAR 660-046-0220(2)(b), (3)(c), and (4c).

³² OAR 660-046-0220(3)(c)

Development Standard	Issue or Revision Needed (By Housing Type and Zone)
	(7.9 units per acre). This maximum will need to be increased to at least 25 units per acre.
Maximum Lot Coverage	<ul style="list-style-type: none"> • Tiered Lot Coverage: In most zones, maximum lot coverage is tiered based on building height. Generally, 1-story buildings would be subject to a maximum of 40% and 1.5-2 story buildings would be subject to a maximum of 35%. This standard is permissible because it does not apply differently to middle housing vs. single-family housing. • However, 35% lot coverage is very low and would be a significant barrier to many middle housing types. The intent of this standard seems to be to control overall bulk and massing on the site. There are alternative techniques for regulating bulk and scale which may meet the intent of this standard while providing more flexibility for middle housing types, such as maximum FAR, bulk plane standards, or max building width or depth.

Table 6. Analysis of Minimum Lot Area Standards³³

Dwelling (WDO Terms)	Applicable Middle Housing Type (OAR Division 46 Terms)	RS		RSN		R1S		RM		RMN	
		Interior	Corner	Interior	Corner	Interior	Corner	Interior	Corner	Interior	Corner
Single-family dwelling	Cottage Cluster (individual lot) ¹	6,000	8,000	6,000	8,000	3,600	3,600	6,000	8,000	4,000	5,000
Small lot single-family	N/A	-	-	4,000	5,000	-	-	-	-	-	-
Duplex	Duplex	-	10,000	-	10,000	-	-	8,000	8,000	8,000	8,000
Multi-family dwelling	<ul style="list-style-type: none"> • Triplex • Quadplex • Cottage Cluster (single lot) 		-	-	-	-	None	None	87,120	87,120	
Rowhouse	Townhouse	-	-	4,000	5,000	-	-	None	None	3,000	3,600
Legend		Does not comply with Division 46		May not comply with Division 46		Complies with Division 46					

¹ A Cottage Cluster dwelling on its own individual lot would be classified as a single-family dwelling. Division 46 does not require that the City allow Cottage dwellings on their own lot. If permitted, however, the min lot size would need to be reduced so that a Cottage Cluster site (with 4 or more units each on their own lot) could be feasible on the minimum lot size for a single-family dwelling in that zone.

³³ Analysis of compliance based on OAR 660-046-0220

2.03 Commercial Zones

The review of commercial zones was limited to the DDC zone, per staff direction. The DDC zone is not strictly required to be amended by Division 46 because it is primarily a non-residential zone. One potentially appropriate change would be to permit duplexes in the zone in order to support more residential development in the area. Additionally, the City may consider increasing the maximum density for townhouses in order to reduce barriers to this housing type and achieve more consistency with density standards of the residential zones.

2.05 Overlay Districts

Subsection	Issue or Revision Needed
2.05.02 Interchange Management Area Overlay District	These provisions do not seem to apply to residential developments. If they do, they are a clear and objective standard that applies regardless of housing type, so they conform with Division 46. However, should a zoning or comprehensive plan map amendment be proposed as a result of this project, it may trigger these provisions.
2.05.03 Neighborhood Conservation Overlay District.	This overlay district is applicable because it applies to residential development in the RS and RM base zones. See audit of the relevant architectural design standards in Section 3.07.04.
2.05.04 Nodal Overlay Districts.	<ul style="list-style-type: none"> • This overlay district is applicable because it applies to residential development in the RSN and RMN zones. • Subsection (B) applies more restrictive access and parking standards to attached single-family dwellings (row house/townhouse) than to detached single-family dwellings. Access and parking requirements are considered a “design standard” under Division 46. As such, this standard may need to be amended to meet one of the three options for minimum compliance for design standards. Additionally, the standard should be amended to clarify how it applies to other middle housing types. • Subsection (C) requires a “master plan” for the entire area within the Nodal Overlay District prior to annexation. However, the provision states "the master plan shall be conceptual and non-binding in nature, but may be used as a general guide for development." (2.05.04.C). Division 46 includes special provisions for Master Planned

Subsection	Issue or Revision Needed
	<p>Communities.³⁴ In order to be eligible for approval under these special provisions, the City must be able to enforce a minimum density requirement for the entire master planned area. As master plans developed to meet this requirement for the Nodal Overlay District are non-binding, the City cannot enforce specific standards on the master planned area. Therefore, these master plans are not eligible for the special provisions for Master Planned Communities under Division 46. However, as identified below, some areas that may have been included in a Nodal Overlay master plan may also be included in a Planned Unit Development, and these areas may be eligible for these special provisions. .</p>
<p>2.05.05 Riparian Corridor and Wetlands Overlay District</p>	<ul style="list-style-type: none"> • This district will qualify as Goal Protected land under Division 46, and therefore it is permissible to limit duplexes and prohibit other middle housing types within in.³⁵ • Staff noted that the RCWOD can effectively preclude development or redevelopment of some smaller lots, though relief from the standards can be granted by variance (2.05.05E). However, the approval criteria and process for a variance may be unnecessarily restrictive for certain, lower impact developments, so it may be appropriate to allow reduction of the standards through a Zoning Adjustment in these cases. If this change is adopted, the same provision must apply to duplexes as single-family dwellings under Division 46.

2.07 Special Uses

Subsection	Issue or Revision Needed
<p>2.07.02 Boat, Recreational</p>	<p>This could be interpreted as a “design standard” under Division 46.³⁶ The issue of boat or RV parking is not addressed</p>

³⁴ OAR 660-046-0205(2)(c)

³⁵ OAR 660-046-0205(2)(a)

³⁶ According to OAR 660-046-0020(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.

Subsection	Issue or Revision Needed
and Vehicle Storage Pad	by the Model Code. Under Division 46, the City would need to apply the same standard to middle housing as is applied to single-family. 2.07.03 Common Boat, Recreational and Vehicle Storage Area applies to multi-family development. May need to amend so middle housing is not treated differently than single-family.
2.07.06 Duplex	<ul style="list-style-type: none"> • Subsection (A) requires duplexes to locate on corner lots. This does not comply with Division 46 and must be removed. • Subsection (B) requires each unit to have access from different street frontages. This is defined as a design standard under Division 46, and it does not meet any of the minimum compliance standards, so it will need to be amended or removed. The intent of the standard may be achieved under a different standard, however, such as by requiring entries that face a single street frontage to be spaced a minimum distance apart.
2.07.20 Accessory Dwelling Units:	<ul style="list-style-type: none"> • Subsection (A) allows for one ADU per single-family detached dwelling. This should be amended to clarify if an ADU is permitted on a site with middle housing and how the use would be classified. Division 46 does not require cities to allow ADUs on sites with middle housing, but it may be advantageous to allow this.³⁷ This issue will be explored further in the Code Concepts. • Subsection (C) requires ADUs to match the architectural design of the primary dwelling. This can be a barrier to ADU development and may not result in the best design outcome in many cases. Consider alternative approaches, such as only requiring for attached ADUs, 2-story ADUs, or only requiring certain elements match the primary dwelling. The standard may also need to be revised to ensure it satisfies requirement for clear and objective standards.

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.

³⁷ OAR 660-046-0205(4)

Subsection	Issue or Revision Needed
	<ul style="list-style-type: none"> • Subsection (E) limits the floor area of an ADU to 50% of existing dwelling. This can be a significant barrier to ADUs on sites with existing, small house. Consider increasing the maximum to at least 75% or eliminating this requirement and only applying the flat cap of 725 sf. Additionally, consider adding language to allow conversion of an entire existing floor of a house to an ADU (basement, upper floor) regardless of square footage. • Subsection (H) prohibits new street-facing entrances for ADUs. This standard cannot apply to a duplex under Division 46, therefore, consider not requiring for an ADU. • Subsection (I) references the non-conformities allowances of the WDO. As noted above, these standards may need to be revised to provide more flexibility to allow increases in non-conformance for certain standards. • Staff suggested that it may be appropriate to require ADUs to have a walkway connection from the street and to include private open space requirements. If proposed, the City should consider applying similar or equivalent standards to duplexes for consistency.

2.08 Specific Conditional Uses

The only applicable standards in this section are in 2.08.02 Historically and Architecturally Significant Buildings. Subsection (C)(1) allows adaptive reuse of historic properties to include additional dwelling units beyond those allowed in the underlying zone. Division 46 requires cities to allow middle housing types on historic properties where single-family dwellings are allowed. Amendments needed to clarify which housing types are permitted, not only the number of units.

Section 3: Development Guidelines And Standards

3.01 Streets

Subsection	Issue or Revision Needed
3.01.01 Applicability	Subsection (D) exempts construction of a single-family dwelling from the standards of this section. Division 46 requires the City to allow this same exemption for

Subsection	Issue or Revision Needed
	<p>conversions of single-family dwellings to middle housing. For new construction or redevelopment which results in middle housing, the City can apply the street standards of this section. Amendments may also be needed to clarify if this exemption applies to ADUs.</p> <p>In short, all middle housing must be consistently either exempt or subject to street improvements.</p>
3.01.03 Improvements Required for Development	Staff notes that alleys are only required in RSN and RMN zones and it may be appropriate to require them more broadly. If proposed, the standard will need be written so it meets the minimum compliance criteria for design standards under Division 46.
3.01.04 Street Cross-Sections	Staff notes that lane widths for some streets may be unnecessarily wide, which may increase cost of development for all housing types and encourage high traffic speeds. It may be appropriate to consider lane width reductions as part of these code amendments.

3.02 Utilities and Easements

Section 3.02.01 requires a 5’ wide Public Utility Easement (PUE) is along all street property lines. This may be unnecessarily wide and a barrier to middle housing development on smaller sites. It may be appropriate to tier the standard based on zoning, lot size, street classification, or other factors.

3.04 Vehicular Access

Subsection	Issue or Revision Needed
3.04.03 Driveway Guidelines and Standards	Subsection (A)(1) and (2) regulates the number of driveways for residential uses. These standards will need to be amended to clarify how they apply to middle housing types and to ensure they satisfy the minimum compliance criteria for design standards under Division 46.
Access Requirements (Table 3.04A)	Several amendments are needed to this table to clarify applicability to middle housing types. Additionally, it may be

Subsection	Issue or Revision Needed
	appropriate to lessen certain standards, such as the minimum width of driveways, where they are unnecessarily restrictive or costly.

3.05 Off-Street Parking and Loading

Subsection	Issue or Revision Needed
3.05.02 General Provisions	<ul style="list-style-type: none"> • Subsection (E) requires parking areas to be setback a minimum of 5 feet between property lines. This may not comply with Division 46 design standards and may be an unnecessary barrier to joint driveways and parking pads, which are common for middle housing types such as townhouses or duplexes. • Subsection (H) and (K) requires bumper guards and striping for all parking lots, except single-family dwellings and duplexes. This may need to be amended because Division 46 minimum compliance requires cities to apply the same dimensional and design standards to parking areas for middle housing that apply to single-family housing..
3.05.03 Off-Street Parking	<ul style="list-style-type: none"> • Subsection (E) requires bike parking for residential structures with 5 or more dwelling units. Amendments needed to clarify how this will apply to middle housing and to ensure it complies with Division 46. If bike parking is required for middle housing, it may need to be required for single-family dwellings. • Subsection (F) requires garages for most residential units. The standards vary for single-family dwellings or duplexes vs. multi-family uses. Amendments are needed to clarify applicability to middle housing. <ul style="list-style-type: none"> ○ This requirement generally meets Division 46 because the standards are equivalent or less restrictive for middle housing types, however, this requirement imposes a significant cost on housing development and the City may consider removing or lessening it. The Model Code specifically prohibits mandating

Subsection	Issue or Revision Needed
	<p>garages for this reason, though it is permissible to require them under Division 46.</p> <ul style="list-style-type: none"> ○ This requirement is especially challenging for improvements to existing garages or new garages on an existing lot that pre-dates the requirement. Staff notes that the code is unclear as to how it applies to non-conforming garages and a Director’s Interpretation has been applied in the past. It may be appropriate to codify that interpretation at this point.
Parking Ratios (Table 3.05A)	<ul style="list-style-type: none"> ● Residential dwellings are generally required to provide two (2) off-street parking spaces per unit. Generally, the Division 46 minimum compliance standards equate to requiring no more than one (1) space per dwelling unit in most instances. For triplexes and quadplexes on smaller lots, the standards set a lower limit depending on the size of the lot (see Table 7). ● Off-street parking requirements can be a significant barrier to middle housing development. In addition to meeting Division 46 standards, the City may consider amendments to support middle housing development, while addressing concerns about impacts to existing on-street parking utilization. ● An amendment is also needed to remove parking requirement for ADUs per state law.

Table 7. Minimum Compliance Standards - Off-Street Parking Requirements³⁸

Lot size of the development site equals...	Minimum off-street parking requirements must be no greater than...				
	Duplex	Triplex	Quadplex	Cottage Cluster	Townhomes
Less than 3,000 sf	2 spaces (total)	1 space (total)	1 space (total)	1 space per unit	1 space per unit
3,000 - 5,000 sf		2 spaces (total)	2 spaces (total)		
5,000 - 7,000 sf		3 spaces (total)	3 spaces (total)		

³⁸ OAR 660-046-0220

7,000 sf or greater		4 spaces (total)	
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3.06.07 Significant Trees

Subsection	Issue or Revision Needed
3.06.07(B) Applicability	<ul style="list-style-type: none"> • Division 46 does not regulate trees. However, were loss of tree canopy due to middle housing a concern, the City may consider Significant Tree amendments to establish standards for preservation in the context of new development and to establish tree preservation tiered fees in-lieu based on number and/or caliper of trees removed. (The existing standards address existing development.) • For example, the WDO defines Significant Trees as any tree over 24 inches in diameter. Many smaller trees may be worthy of preservation or at a minimum should be encouraged to be preserved as new development occurs. • Middle housing development may be more likely to result in tree removal than single-family houses because (1) it may be more likely to occur on existing lots with mature trees and (2) the total footprint of middle housing buildings are generally larger than single-family houses.

3.07 Architectural Design

Subsection	Issue or Revision Needed
3.07.01 Applicability	<ul style="list-style-type: none"> • This subsection exempts alterations to existing single-family dwellings and duplexes from all the architectural design standards and guidelines of Section 3.07, except for such dwellings located within the Neighborhood Conservation Overlay District (NCOD). • Division 46 is unclear as to whether alterations to pre-existing middle housing must also be exempt from design standards. Conversions and additions of single-family dwellings to create middle housing must be exempt,

Subsection	Issue or Revision Needed
	<p>however, so this section should be amended accordingly.³⁹</p>
<p>3.07.02 Single-Family Dwellings, Duplexes and Manufactured Dwellings on Individual Lots in Pre-existing Developments</p>	<ul style="list-style-type: none"> • Generally, these standards are permissible under Division 46 because they apply equivalent standards to duplexes as single-family dwellings. However, several amendments would be needed to ensure the standards scale by form-based attributes of the building and not by the number of dwelling units: <ul style="list-style-type: none"> ○ Replace all references to “dwelling” or “dwelling unit” to building or structure or façade. ○ Subsection (E) Main Pedestrian Entrance. This provision does not comply with Division 46 because it scales by the number of dwelling units. Alternatively, this could scale by the length of street-facing façade. Such as: 0-50 feet = one entrance, 50-100 feet = two entrances, etc. • Staff suggests edits to clarify some wording and fix error in title of Figures 3.107A and 3.107B.
<p>3.07.03 Single-Family Dwellings, Duplexes and Manufactured Dwellings on Individual Lots in New Developments</p>	<ul style="list-style-type: none"> • The same findings as above (3.07.02) apply to this section. The standards generally comply with Division 46 for duplexes but must be adjusted to scale by form-based attributes of the building and not by the number of dwelling units.
<p>3.07.04 Single-Family Dwellings and Duplexes in the Neighborhood Conservation Overlay District (NCOD)</p>	<ul style="list-style-type: none"> • The same findings as above (3.07.02) apply to this section. • Additionally, some of these standards are not clear and objective, so amendments may be needed to convert these standards to clear and objective language.
<p>3.07.05 Standards for Medium Density Residential Buildings</p>	<ul style="list-style-type: none"> • Under current WDO definitions, this section would apply to triplexes, quadplexes, and potentially to cottage clusters on a single lot.

³⁹ OAR 660-046-0225(2)

Subsection	Issue or Revision Needed
	<ul style="list-style-type: none"> <li data-bbox="610 281 1398 470">• The standards are more restrictive than the Model Code because they regulate materials and require private open space, among other elements, so they do not meet the Division 46 minimum compliance criteria that they are less restrictive than the Model Code.⁴⁰ <li data-bbox="610 491 1382 680">• Amendments will be needed to either (1) apply Model Code standards to these middle housing types, (2) apply less restrictive versions of the Model Code standards, or (3) apply the same standards that apply to single-family dwellings and duplexes.⁴¹

3.09 Planned Unit Developments

Subsection	Issue or Revision Needed
3.09.01 Allowable Types and Minimum Area of a PUD	<ul style="list-style-type: none"> <li data-bbox="610 980 1406 1127">• Division 46 does not regulate Planned Unit Developments (PUDs), except if they are classified as master-planned communities. Middle housing must be permitted outright and not required to be approved through a PUD. <li data-bbox="610 1148 1414 1421">• However, proposed new middle housing standards should be compared to the existing PUD standards to evaluate how they may impact the relative attractiveness of the PUD track vs. a “clear and objective” track. The City may desire to ensure that a PUD is still an attractive option for developers compared to the new middle housing standards. <li data-bbox="610 1442 1406 1757">• The minimum size of a PUD under 3.09.01 is two (2) acres for a residential PUD and three (3) acres for a mixed use PUD. This section may need to be amended to identify that a PUD must be at least 20 acres in size in order to qualify as a “Master Planned Community” under Division 46 and thus be eligible for the special provisions for these areas, which exempt them from certain middle housing requirements.

⁴⁰ OAR 660-046-0225(1)(b)

⁴¹ OAR 660-046-0225(1)

Subsection	Issue or Revision Needed
3.09.02 Allowed Uses	<ul style="list-style-type: none"> The lists of housing types/residential uses in this section should be amended to reflect that the City must allow for all middle housing types in any PUD that would be classified as a Master Planned Community under Division 46.
3.09.03 Density Transfer	<ul style="list-style-type: none"> These provisions allow for transfer of density from undevelopable portions of a site to developable portions. The base allowance is for 40 percent of the density of the undevelopable portion. Additional density may be granted if the development provides certain amenities or features, such as parks, trails, or architectural enhancements. Following code amendments to comply with Division 46, the WDO will allow significantly more density outright. Division 46 minimum compliance standards require the City to increase maximum density standards or exempt some housing types from them. As a result, developers may find that there is less incremental benefit of using the Density Transfer PUD provisions than today. This issue will be analyzed further as part of the Code Concepts stage of this project. The City may consider restructuring these incentives if it wishes to encourage developments to use the Density Transfer provisions.
3.09.06 Development Standards	<ul style="list-style-type: none"> The City may continue to apply these development standards to any PUD that is classified as a Master Planned Community. The standards do not restrict housing types and do not apply a maximum density. However, the City is now required to allow at least 15 dwelling units per acre in any PUD that could be classified as a Master Planned Community. This should be noted in Table 3.09A so the City does not restrict density too greatly through applying other standards, such as common area requirements.
3.09.07 Modifications to an Approved Detailed	<ul style="list-style-type: none"> As noted in the State Policy Framework section, it is suggested that the City amend this section to identify that any previously approved PUD can be amended to use

Subsection	Issue or Revision Needed
Development Plan	<p>these Master Planned Community allowances. These two allowances are:</p> <ul style="list-style-type: none"> ○ Allow an overall net residential density of at least 8 dwelling units per acre ○ Allow for the development of a duplex on every lot in the PUD.

3.10 Signs

Table 3.10.10A may need to be amended to clarify the applicability of sign requirements to middle housing types.

Section 4: Administration and Procedures

No provisions in Section 4 are anticipated to need to be amended to comply with the Division 46 middle housing rules.

Section 5: Application Requirements

Division 46 requires that cities apply the same approval process to middle housing as detached single-family dwellings in the same zone.⁴² Below is a summary of compliance with this standard:

- Duplexes are subject to the same approval processes as single-family. If not part of a larger partition, subdivision, or PUD, then a duplex is subject to Design Review, Type I (5.01.02). If the project cannot meet all clear and objective design standards, then it can apply for Architectural Standard Substitution (Type II, 5.02.02) for a maximum of three substitutions. There is not another alternative track for a single-family dwelling or duplex if it cannot meet more than three of the design standards.
- All other middle housing types would also be subject to a Design Review, Type I (5.01.02) if not part of a larger partition, subdivision, or PUD and eligible to apply for Architectural Standard Substitution (Type II, 5.02.02). However, if a middle housing type that would be currently classified as a multi-family dwelling cannot meet any of the clear and objective standards of Section 2 or 3, then it is also subject to a Design Review, Type III (5.03.02). Under Division 46, middle housing types must be subject to the same approval process as single-family housing. Therefore, it may be necessary to make amendments so that middle housing projects that cannot meet all clear and objective standards do not automatically trigger a Type III Design Review. A Type III

⁴² OAR 660-046-0215

Design Review may remain an optional track, but to comply with Division 46, the City may need to allow middle housing projects that qualify for an Type II Architectural Standard Substitution to not also be required to file a Type III Design Review, in the same manner as a single-family housing project would be permitted.

SECTION 3

Neighborhood Patterns Analysis

Executive Summary

Infill development of middle housing types in Woodburn’s existing neighborhoods may look and feel different than existing, single-family dwellings. However, the City has the opportunity to regulate the form and design of middle housing to be compatible with the character and patterns of existing neighborhoods. These may include standards that control the bulk and scale of middle housing, building placement and orientation to the street, architectural design, and other elements.

In order to craft regulations that will ensure new middle housing developments are compatible with existing neighborhood context, it is necessary to analyze and describe existing neighborhood patterns. That is the purpose of this section of the Background Report. The analysis incorporates quantitative data and qualitative observations to create a profile of various residential areas across the City.

This section of the report presents a series of maps that show how residential areas vary in Woodburn based on certain key features. These maps were used to help identify the boundaries of certain areas in Woodburn that exhibit similar patterns, termed “pattern areas”. A profile is then presented of each pattern area. A total of six pattern areas were profiled.⁴³

1. Midcentury Ranch
2. Midcentury Ranch – Senior Estates
3. Conventional Suburban
4. Contemporary Suburban
5. Downtown Historic
6. Mixed Era Mosaic

It is important to note that the boundaries of each pattern area may not align with zoning district boundaries. At this stage of the project, these pattern areas are not proposed to be used for regulatory purposes. The purpose of the pattern areas is to define areas that exhibit similar characteristics and to inform a discussion about which patterns the community desires to be preserved and continued as new middle housing development occurs. Should the community desire to vary middle housing regulations in different pattern areas, then the project team will prepare code solutions to implement that policy.

⁴³ Two additional pattern areas were mapped (Garden Apartments and Manufactured Dwelling Parks) but a detailed profile was not created for these areas because they will be largely not affected by HB 2001 zoning changes.

Background and Purpose

Why Conduct This Analysis?

Residential neighborhoods look and feel different depending on architectural styles, the size of homes and lots, presence and variety of trees and landscaping, and other factors influencing their built forms. The City of Woodburn is a physically diverse community, made up of early 20th century neighborhoods of Craftsman and Victorian homes, mid-century subdivisions of ranch homes on small lots, and early 21st century neighborhoods with larger homes. As the City implements HB 2001 and updates development and design standards to allow middle housing types in single family residential zones, the City desires that middle housing be integrated into the existing fabric of the community and compatible with existing, single-family houses.

The purpose of this analysis is to identify key development patterns that are consistent within certain neighborhoods and residential areas in Woodburn. By explicitly identifying these neighborhood patterns, the City can regulate future middle housing development in each neighborhood to ensure it is sensitive to this existing, built context.

The City's existing residential zone districts and overlay districts accomplish this goal to a certain extent, but they were designed under the assumption that, in many areas, the predominant or exclusive form of housing would be a single-family dwelling. While middle housing can be made generally compatible with single-family housing, these housing types are likely to look and feel different and raise new opportunities and challenges. The "pattern areas" and information provided by this analysis can be used to develop new code regulations to address these issues.

Approach to the Analysis

This section of the report first presents a series of annotated maps that show how residential areas vary in Woodburn based on certain key features, including the era of development, street network type, building setbacks, lot coverage, and floor area ratio. These maps were used to help identify the boundaries of certain areas in Woodburn that exhibit similar patterns, termed "pattern areas" in this report. Following this series of maps, a profile is presented of each pattern area, which includes quantitative data on development patterns, images of typical houses, and descriptions of typical building forms and architectural elements.

Note on Data and Methodology

Establishing pattern areas requires balancing quantitative analysis and qualitative observations. The City of Woodburn provided a spatial dataset that was used to analyze attributes. Google Earth was used to capture images of the neighborhoods, providing a visual understanding of the façade elements, tree coverage, and architectural style of homes.

Where will Middle Housing be Developed?

It is important for the City to consider where middle housing types are most likely to be developed after code updates are implemented. At this stage, it is difficult to predict where middle housing may be developed as it is affected by a number of variables, some of which are relatively unknown – such as the market demand for specific middle housing types in Woodburn. However, we can apply a few initial “screens” to identify areas within Woodburn where middle housing may be more likely:

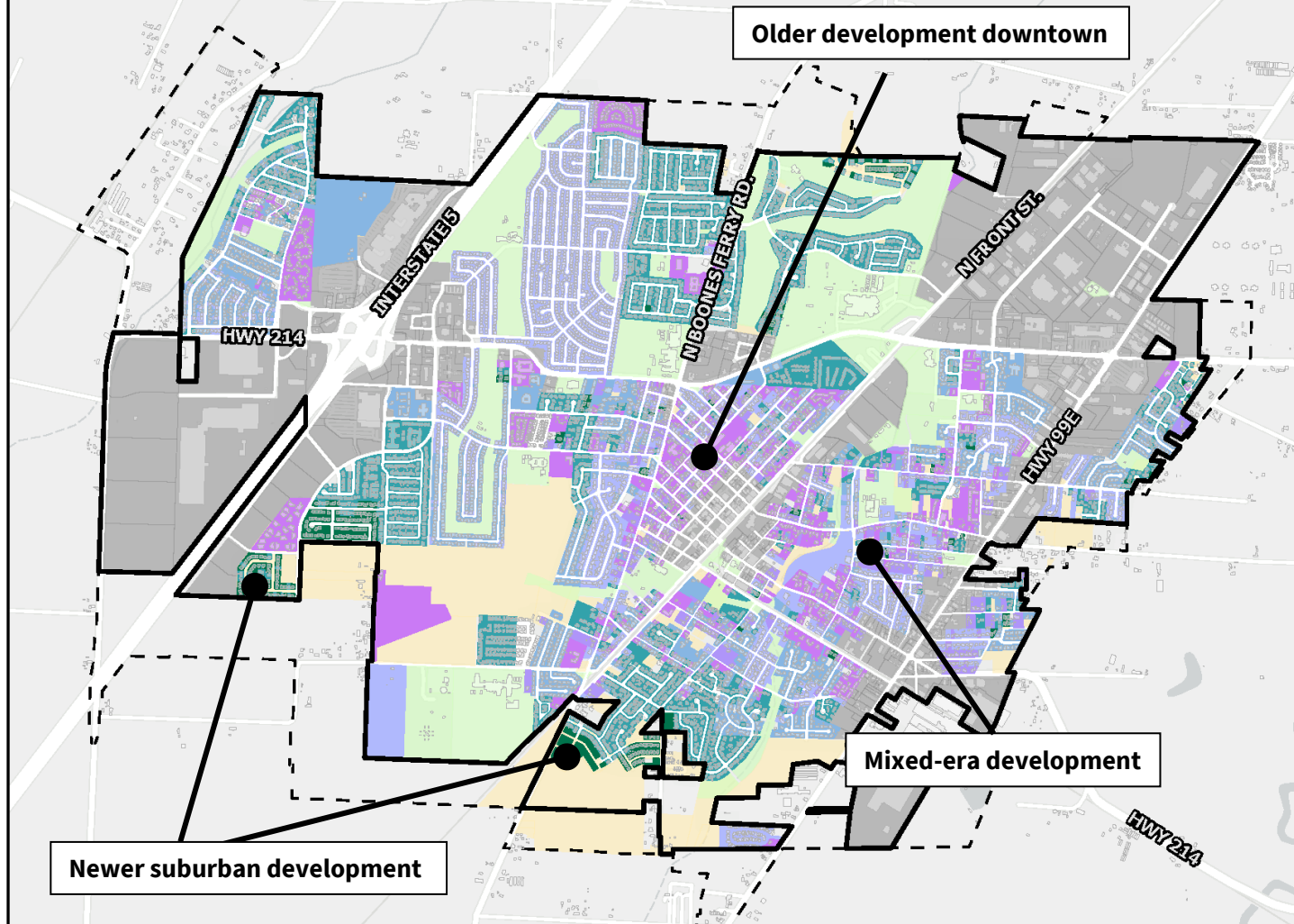
- Properties that do not have CC&Rs that are likely to restrict middle housing;
- Properties that are vacant or partially vacant;
- Properties that have a relatively lower market value, which usually is associated with older properties that have not been recently renovated or redeveloped.

Considering these three factors, the Pattern Areas where middle housing development may be more likely than other areas of Woodburn include:

- Downtown Historic
- Mixed Era Mosaic
- Midcentury Ranch
- Conventional Suburban

However, as noted above, it is difficult to predict which areas are most likely to be developed with middle housing without a very detailed economic analysis. Further, a key factor is the specific development code standards that are adopted. This issue will be explored further in the Code Concepts stage of the project. At this stage, it will also be important for the City to consider any equity issues that may arise if middle housing is concentrated in certain neighborhoods, such as the potential for displacement of current tenants or disproportionate impact on certain communities.

Year Built



Newer suburban development

Older development downtown

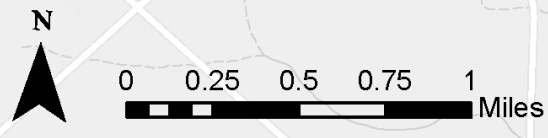
Mixed-era development

Why is this important?

Different eras of development reflect unique architectural standards of the time. For example, homes built in the early 1900's tend to be on smaller lots with smaller footprints, and popular architectural styles for that time include Craftsman, Colonial, and Period Revival. As the decades progressed, lot sizes and building areas tended to get larger, and architectural styles took on a more contemporary feel.

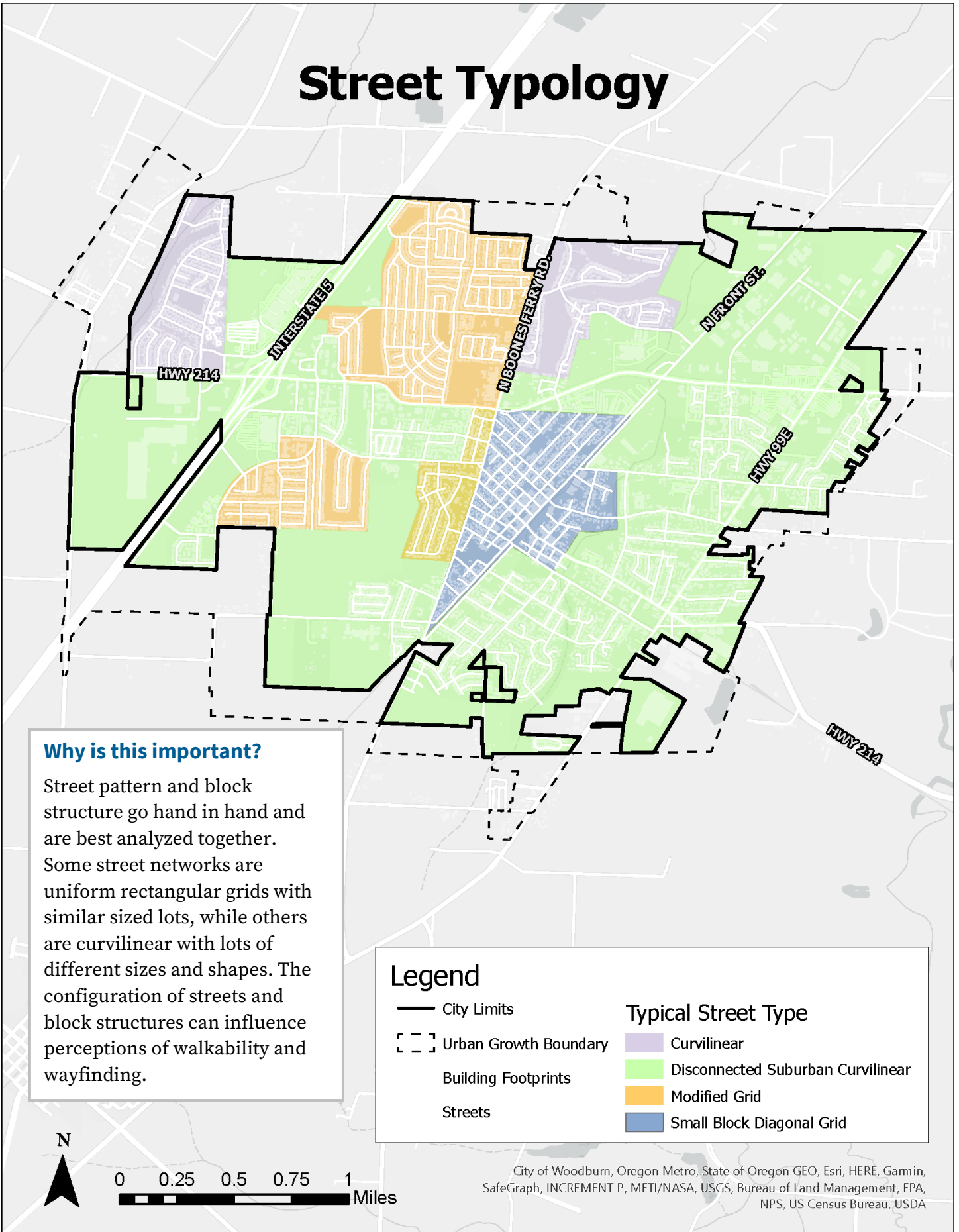
Legend

— City Limits	pre-1920
- - - Urban Growth Boundary	1921-1950
Parks and Open Space	1951-1970
Vacant Residential Land	1971-1990
Nonresidential Zoning	1991-2010
Building Footprints	2011-2020



City of Woodburn, Oregon Metro, State of Oregon GEO, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA

Street Typology



Why is this important?

Street pattern and block structure go hand in hand and are best analyzed together. Some street networks are uniform rectangular grids with similar sized lots, while others are curvilinear with lots of different sizes and shapes. The configuration of streets and block structures can influence perceptions of walkability and wayfinding.

Legend

— City Limits

- - - Urban Growth Boundary

Building Footprints

Streets

Typical Street Type

Curvilinear

Disconnected Suburban Curvilinear

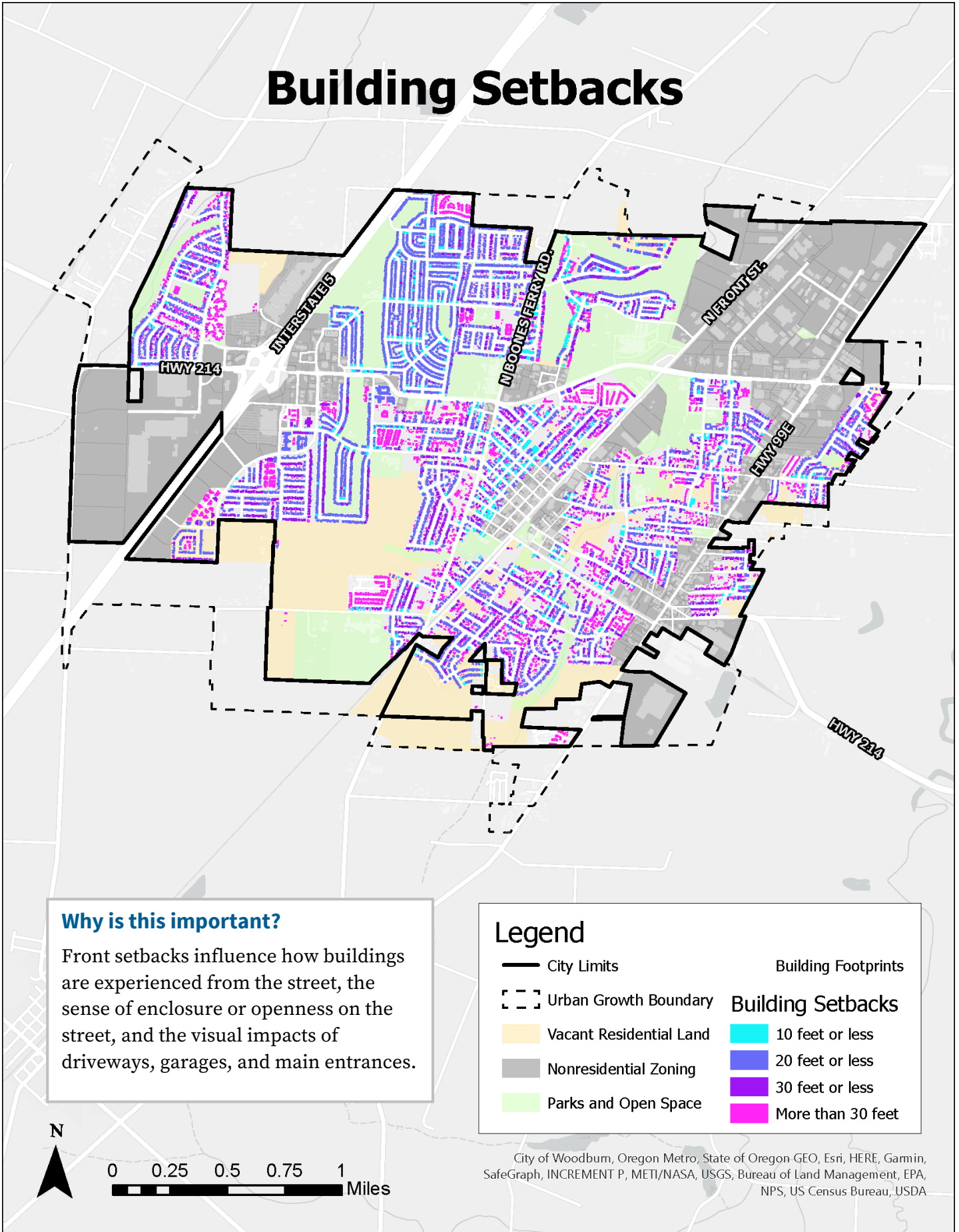
Modified Grid

Small Block Diagonal Grid



City of Woodburn, Oregon Metro, State of Oregon GEO, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA

Building Setbacks



Why is this important?

Front setbacks influence how buildings are experienced from the street, the sense of enclosure or openness on the street, and the visual impacts of driveways, garages, and main entrances.

Legend

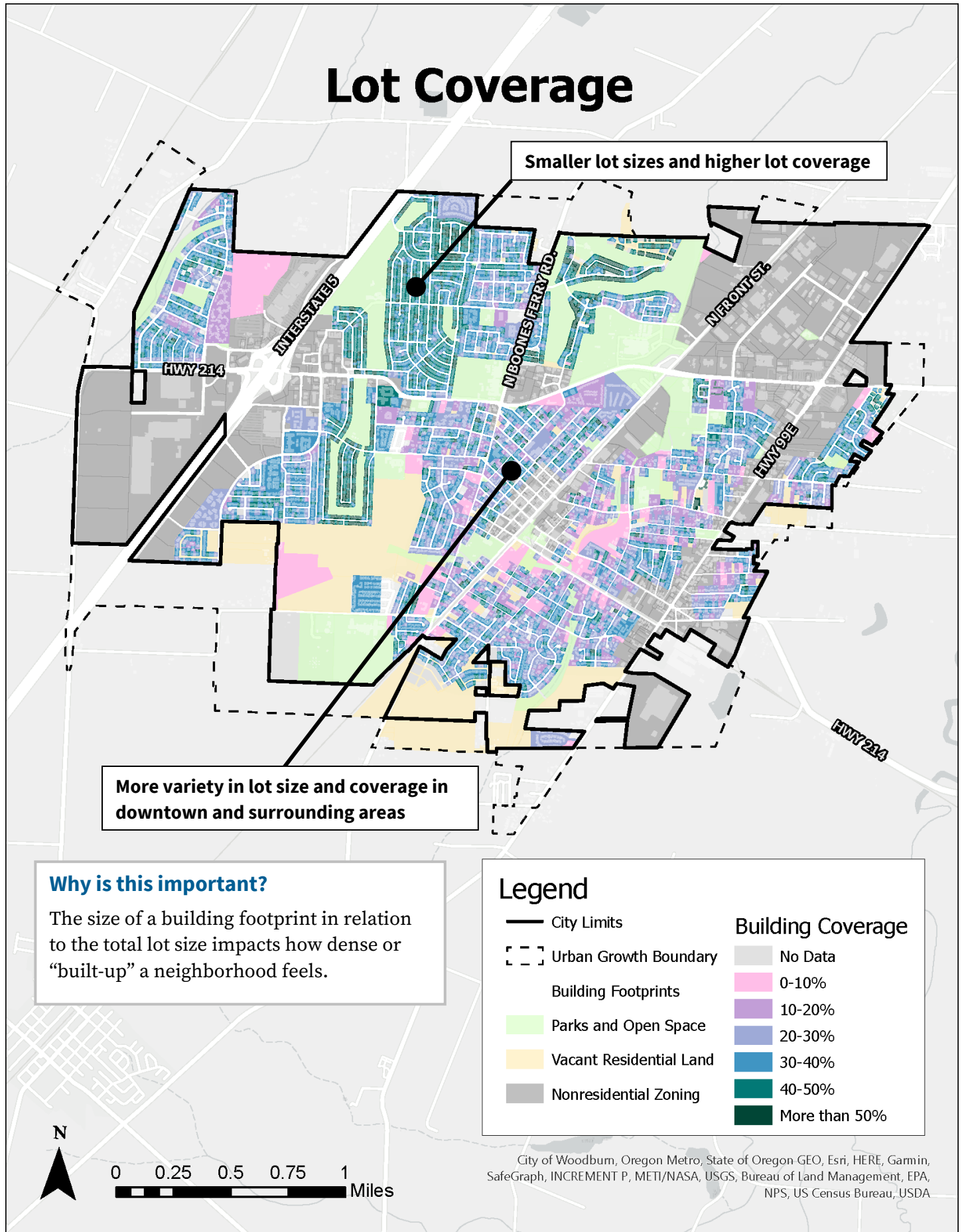
- | | |
|----------------------------------|---------------------------|
| — City Limits | Building Footprints |
| - - - Urban Growth Boundary | Building Setbacks |
| Yellow Vacant Residential Land | Cyan 10 feet or less |
| Grey Nonresidential Zoning | Blue 20 feet or less |
| Light Green Parks and Open Space | Purple 30 feet or less |
| | Magenta More than 30 feet |



0 0.25 0.5 0.75 1 Miles

City of Woodburn, Oregon Metro, State of Oregon GEO, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA

Lot Coverage



Smaller lot sizes and higher lot coverage

More variety in lot size and coverage in downtown and surrounding areas

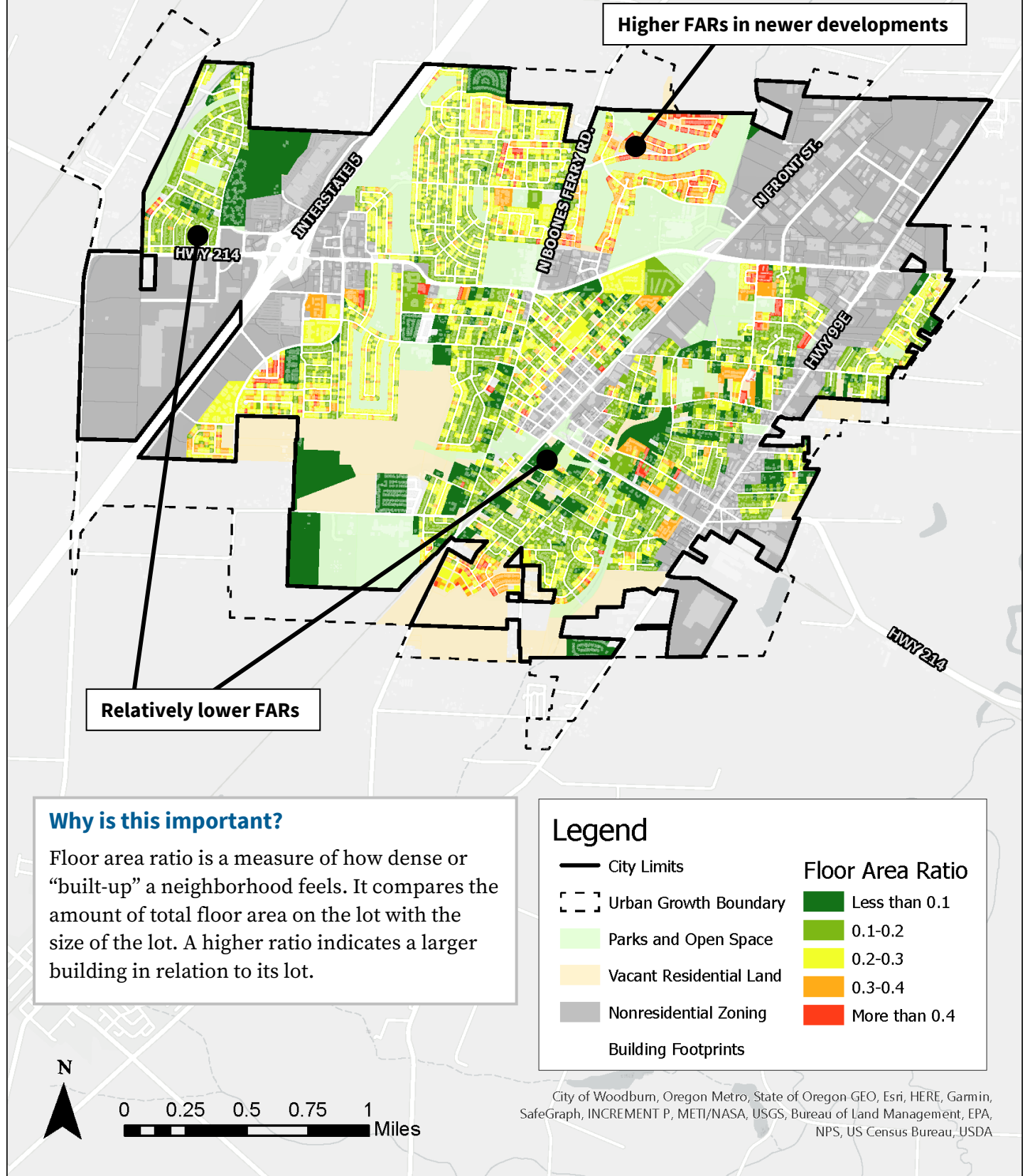
Why is this important?
 The size of a building footprint in relation to the total lot size impacts how dense or “built-up” a neighborhood feels.

Legend

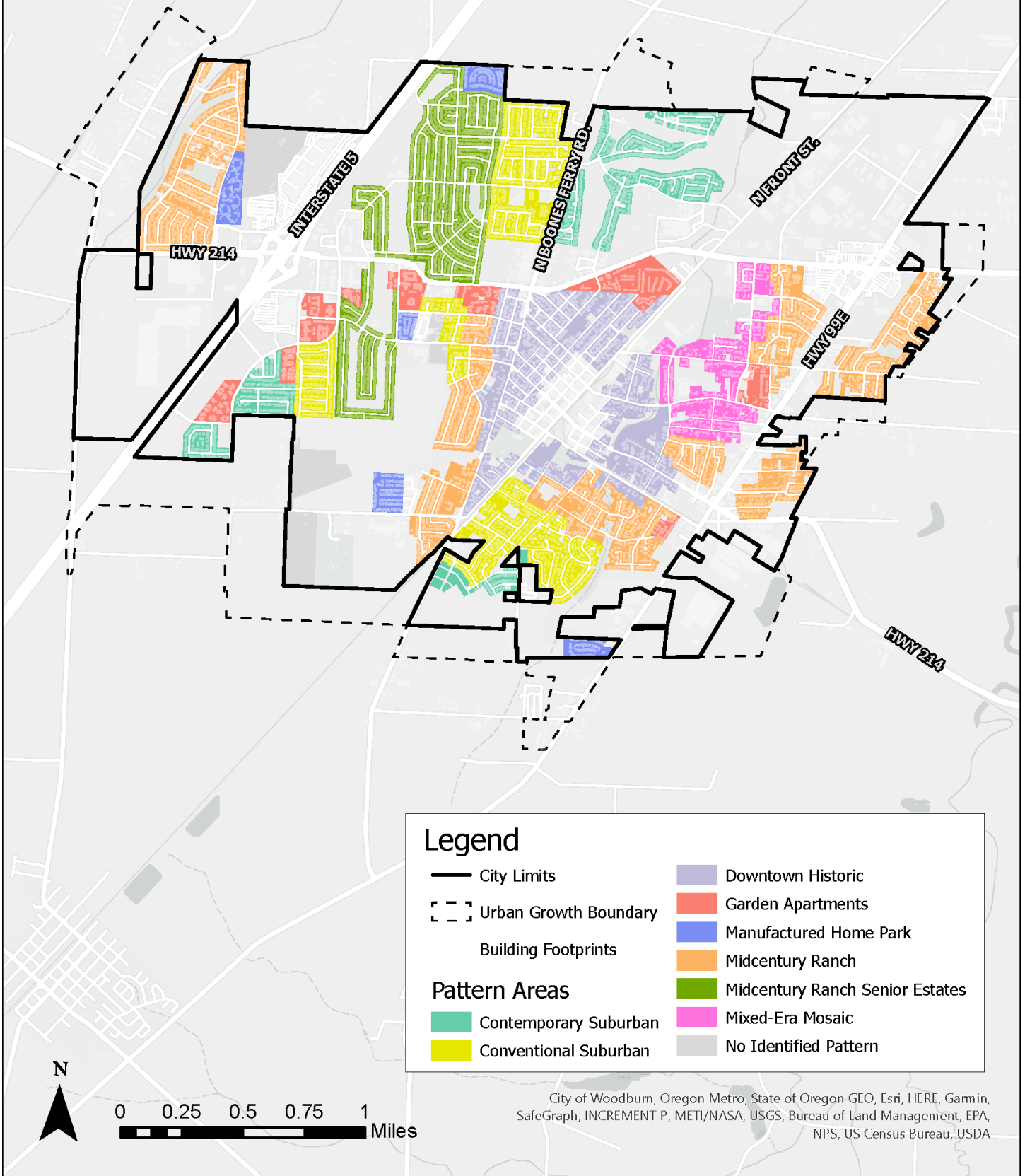
— City Limits	Building Coverage
- - - Urban Growth Boundary	■ No Data
■ Building Footprints	■ 0-10%
■ Parks and Open Space	■ 10-20%
■ Vacant Residential Land	■ 20-30%
■ Nonresidential Zoning	■ 30-40%
	■ 40-50%
	■ More than 50%

City of Woodburn, Oregon Metro, State of Oregon GEO, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA

Floor Area Ratio

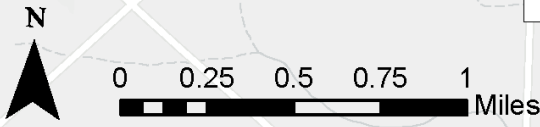


Neighborhood Pattern Areas



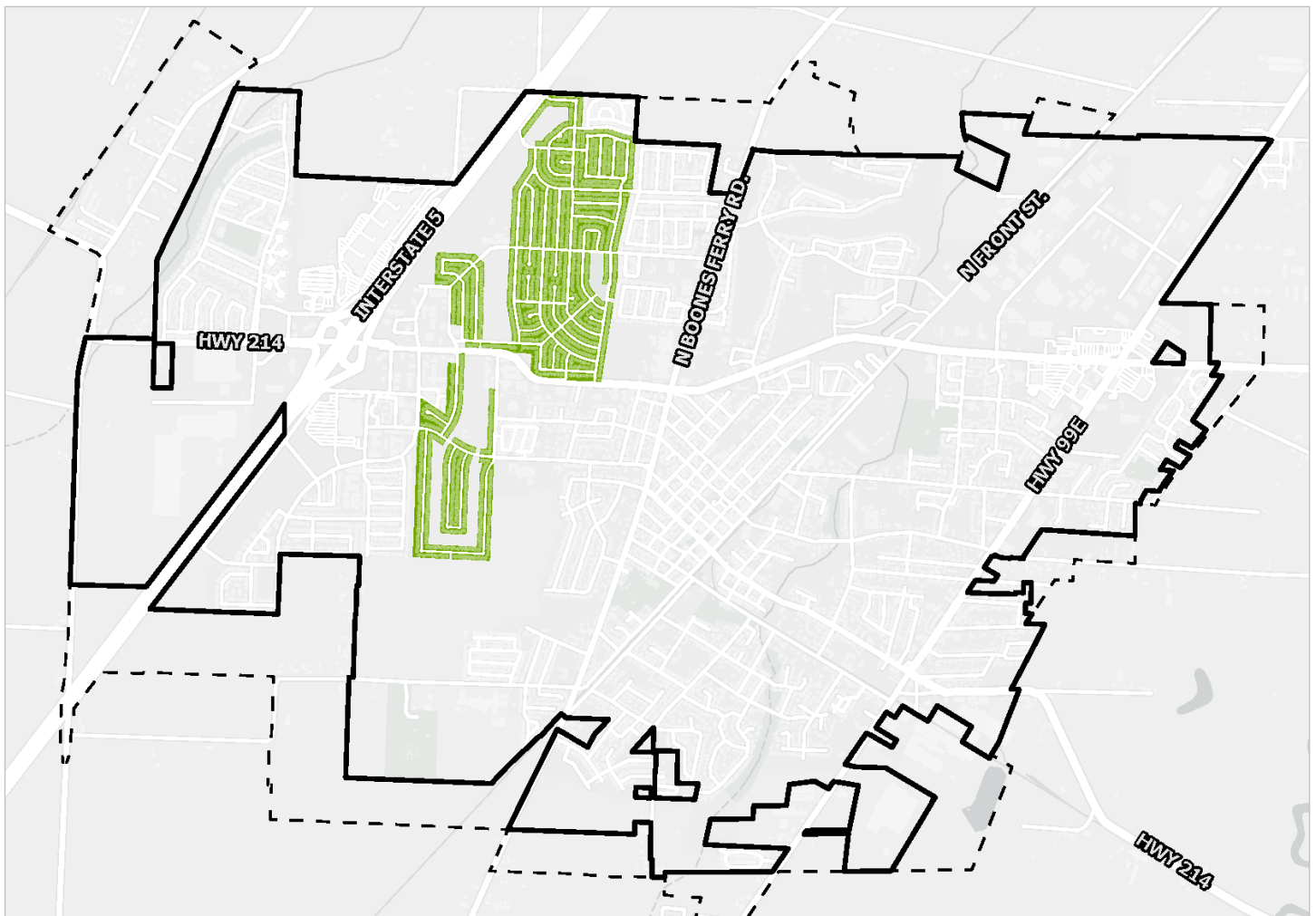
Legend

- City Limits
- - - Urban Growth Boundary
- Building Footprints
- Pattern Areas**
- Contemporary Suburban
- Conventional Suburban
- Downtown Historic
- Garden Apartments
- Manufactured Home Park
- Midcentury Ranch
- Midcentury Ranch Senior Estates
- Mixed-Era Mosaic
- No Identified Pattern



City of Woodburn, Oregon Metro, State of Oregon GEO, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA

Pattern Area: Midcentury Ranch Senior Estates



Era of Development

Typical Year Built:

1960 - 1980

Median Year Built:

1965



Blocks and Streets

Street Network:

Mostly Modified Grid and some Disconnected Suburban Curvilinear

Presence of Alleys:

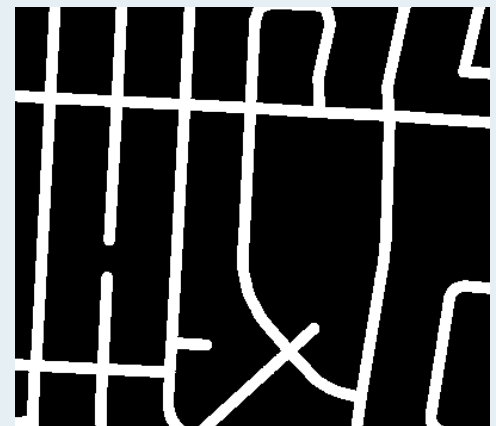
None

Presence of Sidewalks:

None

Presence of Street Trees:

Sparse, only on private ROW



Example of street network found in this pattern area

Pattern Area: Midcentury Ranch Senior Estates

Lot Patterns and Building Placement

Typical Lot Size:

4,000 sf (~45 sf x 90 sf)

4,500 sf (45 sf x 100 sf)

Median Lot Size:

4,473 sf

Median Lot Coverage:

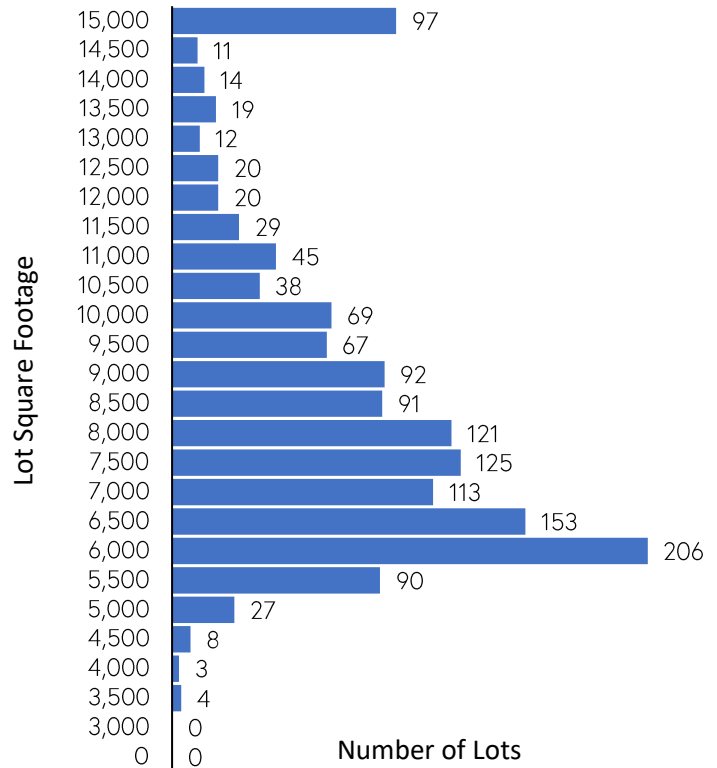
44%

Typical Lot Width:

45-55 feet

Typical Front Setback:

30 feet



Building Form

Median FAR:

0.21

Typical Building Height:

1-story

Garages and Driveways:

Front loaded (single) garages that are even with the primary facade

Roof Form:

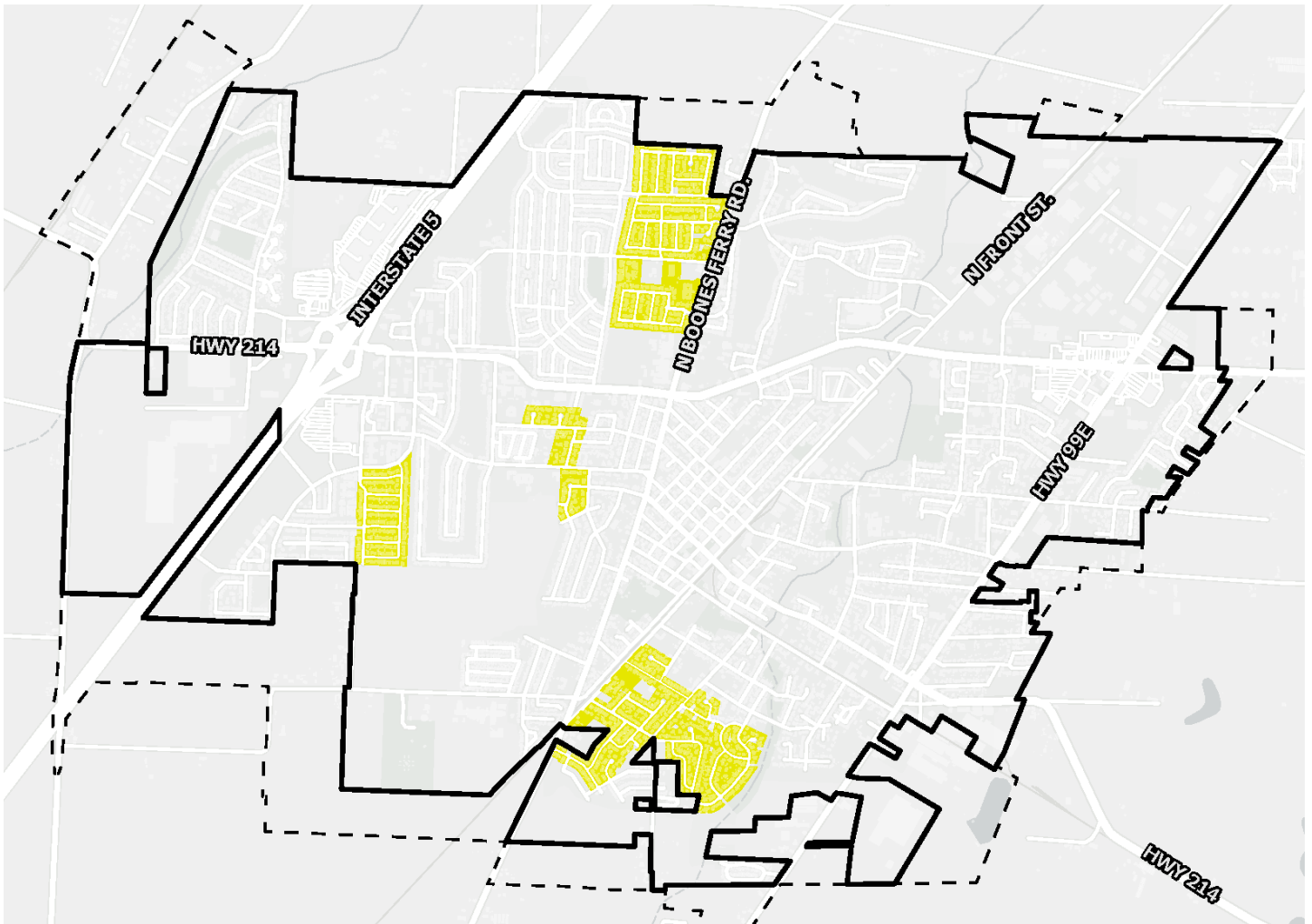
- Gabled with low pitch
- Shallow to moderate eaves

Façade Elements:

- Slightly recessed entry
- Horizontal lap siding
- Horizontal window proportions



Pattern Area: Conventional Suburban



Era of Development

Typical Year Built:

1970-2007

Median Year Built:

2000



Blocks and Streets

Street Network:

Modified Grid and Disconnected Suburban Curvilinear

Presence of Alleys:

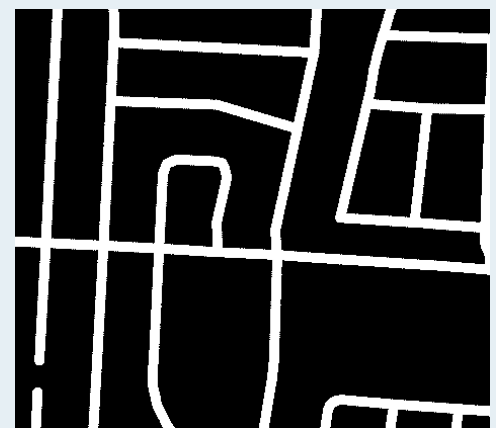
None

Presence of Sidewalks:

All streets

Presence of Street Trees:

Younger trees, planted on landscaping strip



Example of street network found in this pattern area

Pattern Area: Conventional Suburban

Lot Patterns and Building Placement

Typical Lot Size:

6,000 sf (60 sf x 100 sf)

Median Lot Size:

6,802 sf

Median Lot Coverage:

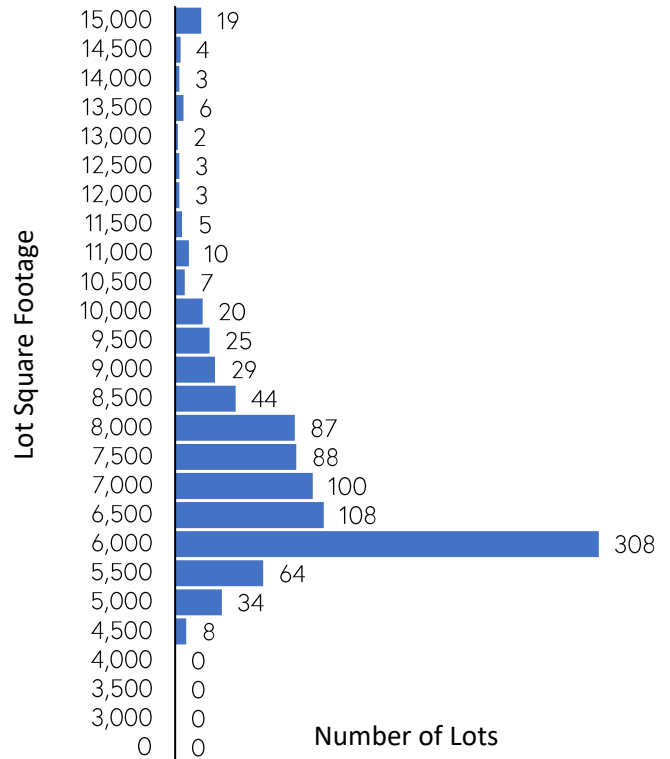
32%

Typical Lot Width:

50 - 60 feet

Typical Front Setback:

20 – 25 feet



Building Form

Median FAR:

0.21

Typical Building Height:

1-2 stories (mostly 1.5 stories)

Garages and Driveways:

- Front loaded garage (mostly double)
- Even with front of house

Roof Form:

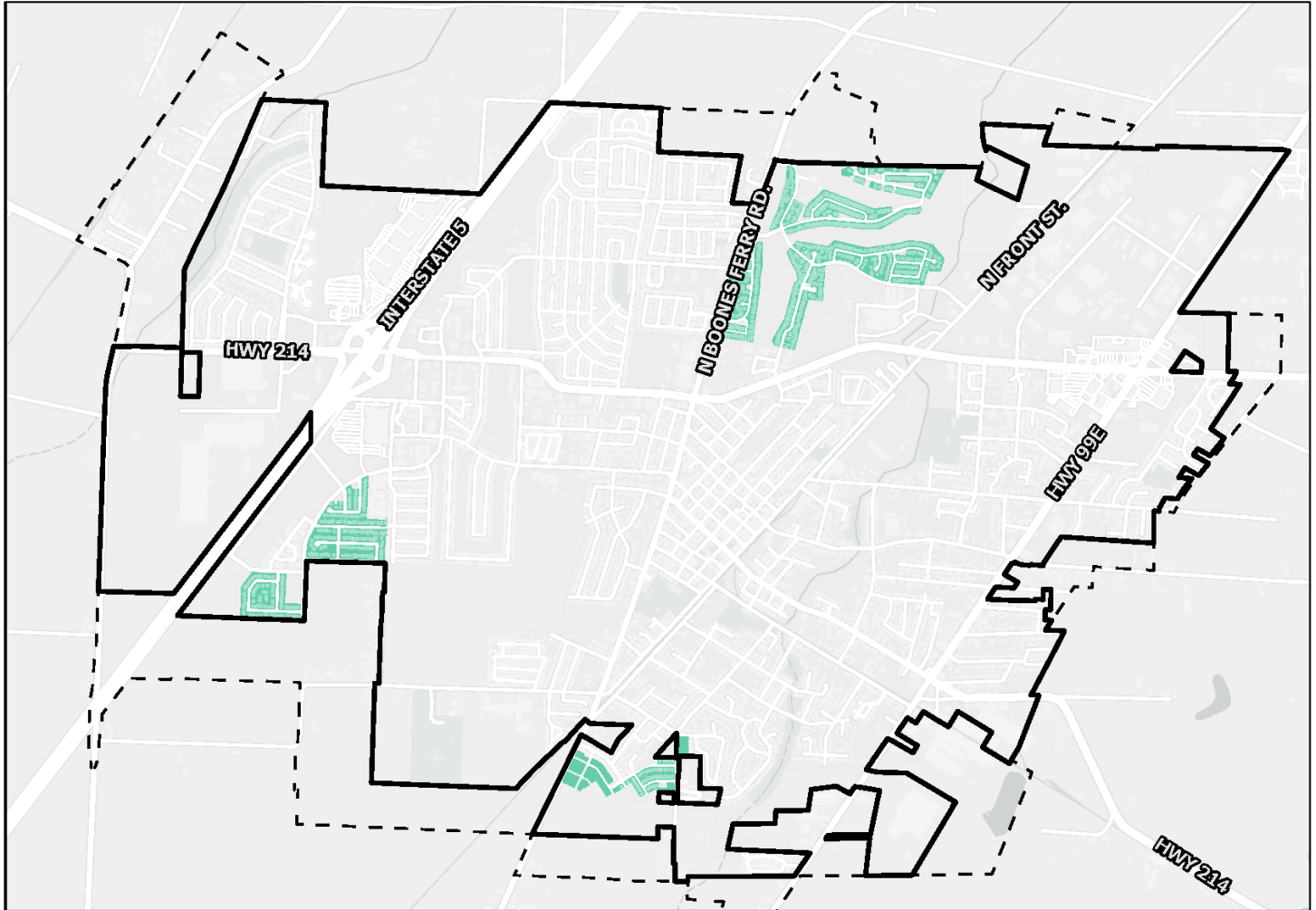
- Gabled with higher pitch
- Eaves on most houses

Façade Elements:

- Horizontal lap siding is most common
- Some detailing on gable walls, such as shingle siding
- Slightly recessed entry or small porch



Pattern Area: Contemporary Suburban



Era of Development

Typical Year Built:

1993 - 2019

Median Year Built:

2006



Blocks and Streets

Street Network:

Curvilinear, Modified Grid, and Disconnected Suburban Curvilinear

Presence of Alleys:

None

Presence of Sidewalks:

All streets

Presence of Street Trees:

Young trees on landscaping strip



Example of street network found in this pattern area

Pattern Area: Contemporary Suburban

Lot Patterns and Building Placement

Typical Lot Size:

- 6,000 sf (60 sf x 100 sf)
- 5,000 sf (50 sf x 100 sf)
- 5,500 sf (55 sf x 100 sf)

Median Lot Size:

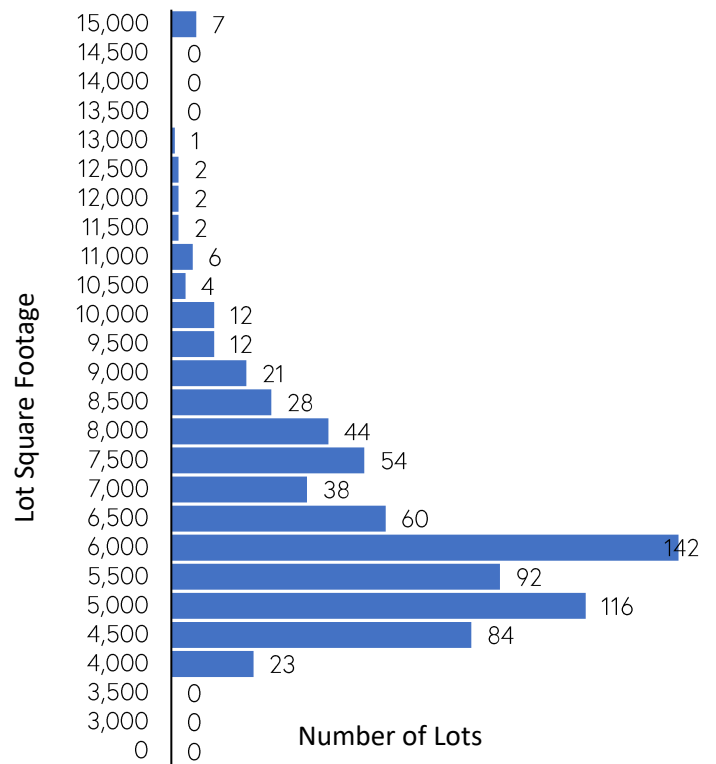
6.166 sf

Median Lot Coverage:

37%

Typical Lot Width:

50-80 feet



Building Form

Median FAR:

0.32

Typical Building Height:

1.5-2 stories (mostly two stories)

Garages and Driveways:

Front loaded garage (mostly double)

Roof Form:

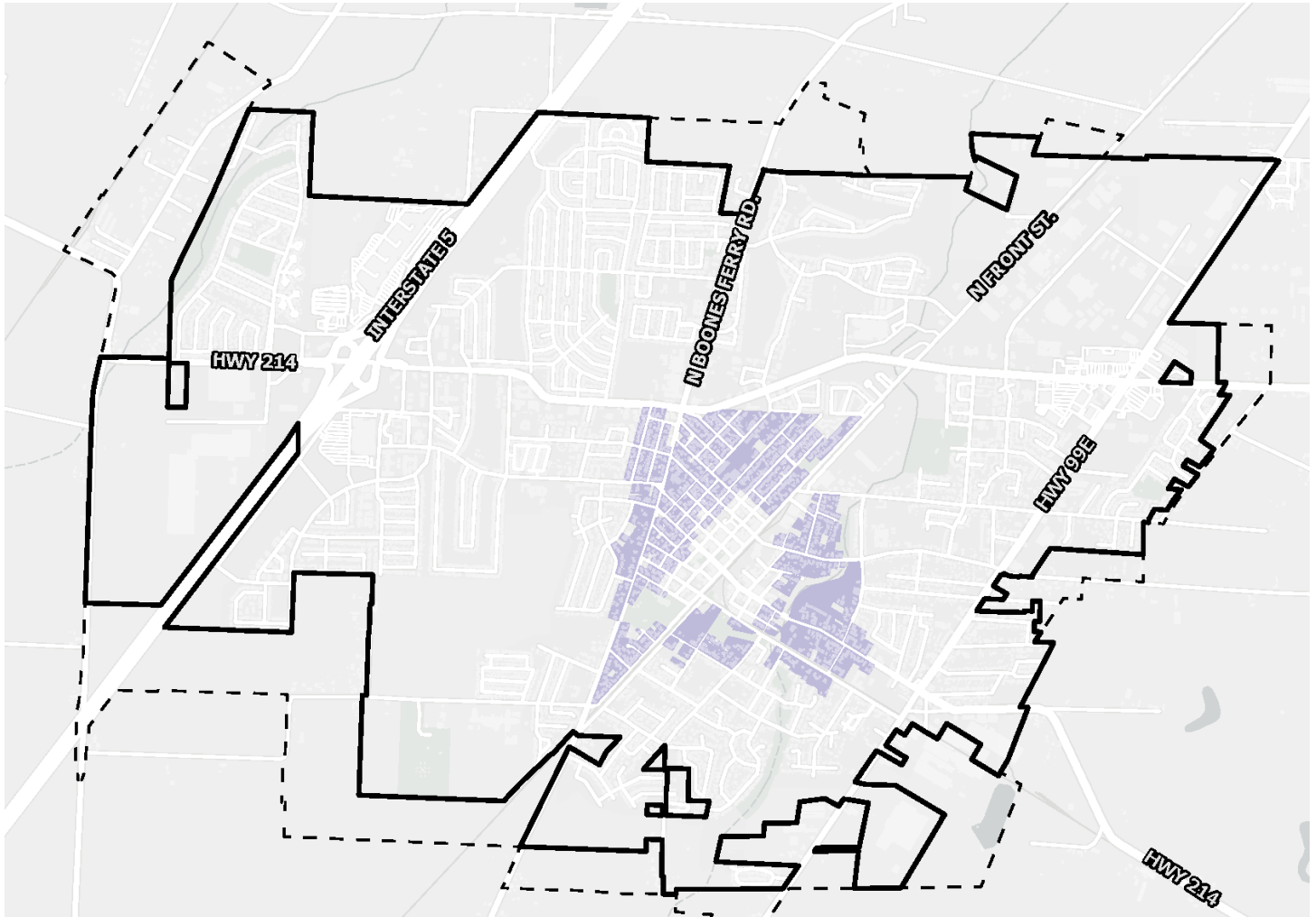
- Gabled with higher pitch or hip roof
- Eaves on most houses

Façade Elements:

- Horizontal lap siding, some vertical siding
- Some detailing on gable walls, such as shingle siding
- Stone/masonry detailing on some houses
- Slightly recessed entry or small porch



Pattern Area: **Downtown Historic**



Era of Development

Typical Year Built:

1900 - 1980

Median Year Built:

1946



Blocks and Streets

Street Network:

Small Block Diagonal Grid, Modified Grid, and Disconnected Suburban Curvilinear

Presence of Alleys:

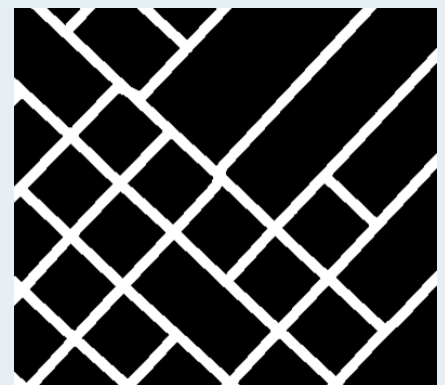
One between Front and 1st Street

Presence of Sidewalks:

On collectors and arterials, missing on some local streets

Presence of Street Trees:

Old, mature trees of various types (both public and private ROW)



Example of street network found in this pattern area

Pattern Area: **Downtown Historic**

Lot Patterns and Building Placement

Typical Lot Size:

5,000 sf (50 sf x 100 sf)
 15,000 sf (150 sf x 100 sf)
 4,500 sf (45 sf x 100 sf)

Median Lot Size:

7,513 sf

Median Lot Coverage:

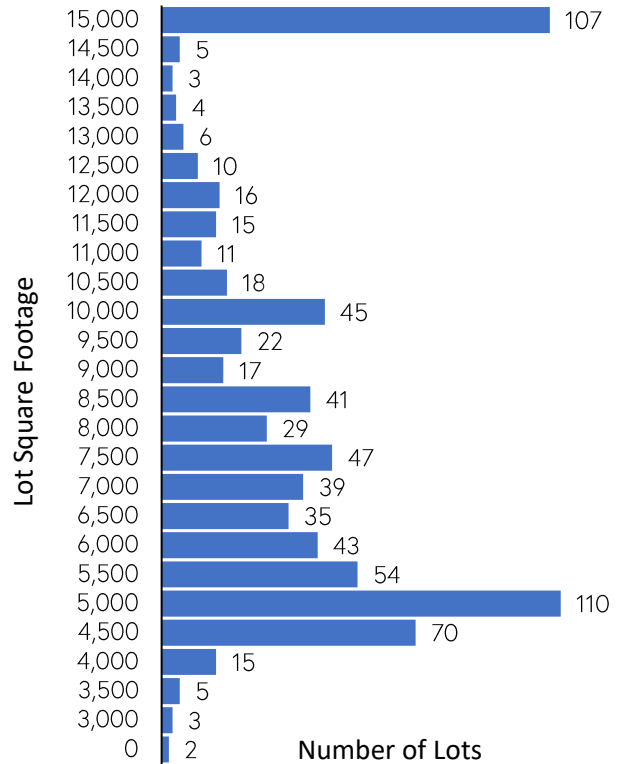
29%

Typical Lot Width:

45 – 55 feet

Typical Front Setback:

10 – 25 feet



Building Form

Median FAR:

0.19

Typical Building Height:

1-2 stories (mostly 1.5 or 2 story)

Garages and Driveways:

- Front loaded (single)
- Some houses do not have garages or have detached garages set back from street

Roof Forms:

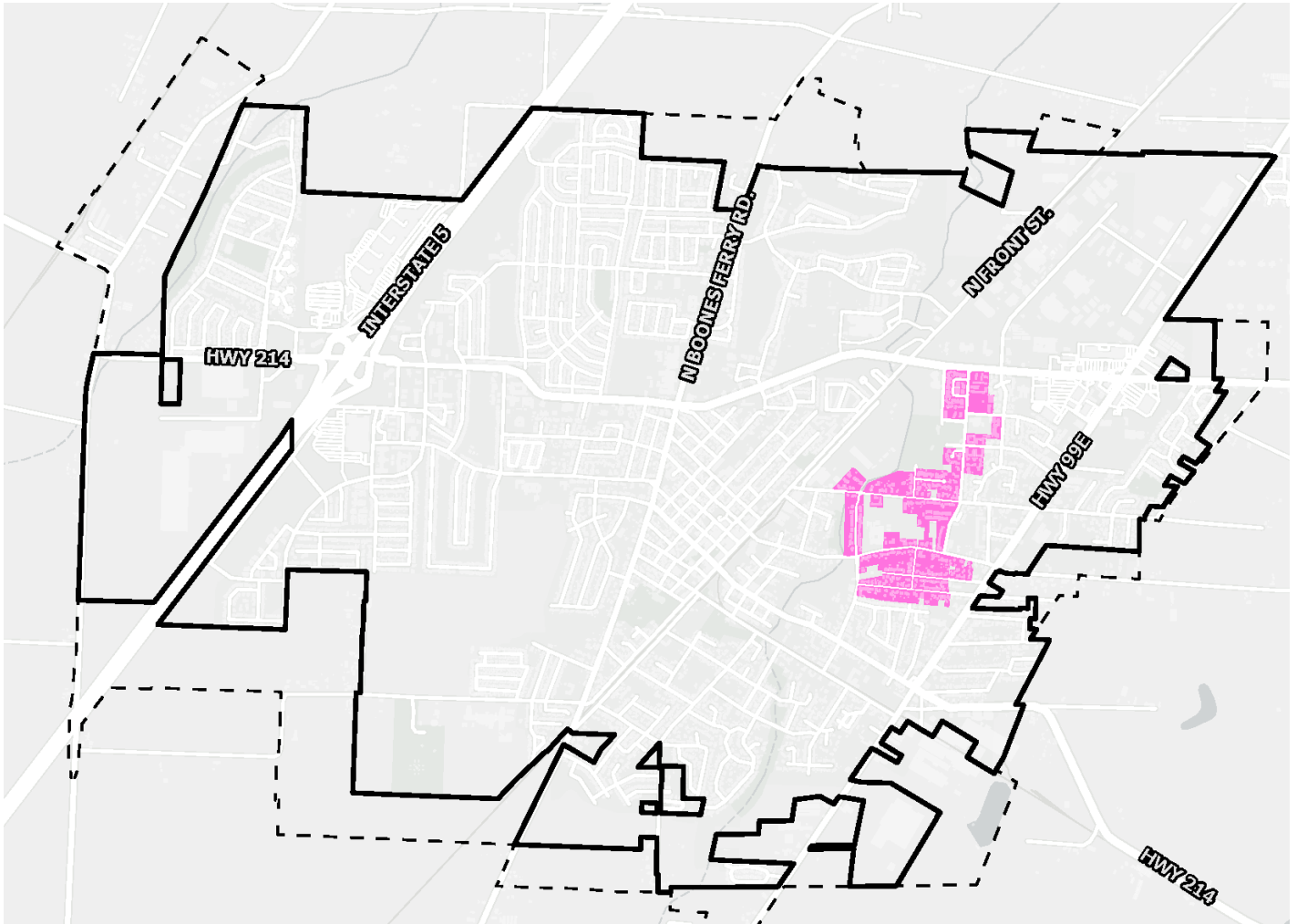
- Varied – gabled, gambrel, hip styles with typically high pitches.
- Prominent eaves on some homes.

Façade Elements:

- Deep front porches more common than other areas
- Vertical window proportions more common
- Paned windows more common
- Varied siding materials



Pattern Area: Mixed-Era Mosaic



Era of Development

Typical Year Built:

1900 – 2000

Median Year Built:

1972



Blocks and Streets

Street Network:

Disconnected Suburban Curvilinear

Presence of Alleys:

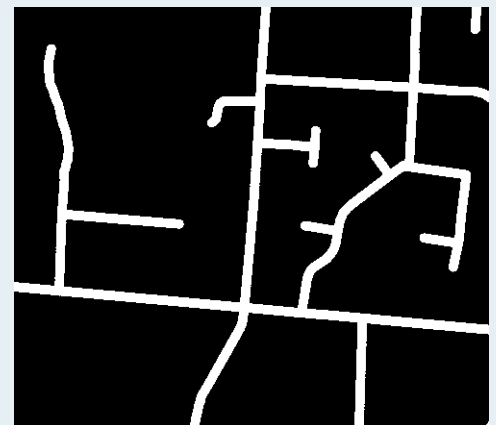
None

Presence of Sidewalks:

Some

Presence of Street Trees:

Private ROW only, trees of mixed ages (mostly older)



Example of street network found in this pattern area

Pattern Area: Mixed-Era Mosaic

Lot Patterns and Building Placement

Typical Lot Size:

15,000 sf (150 sf x 100 sf)

6,000 sf (60 sf x 100 sf)

Median Lot Size:

7,774 sf

Median Lot Coverage:

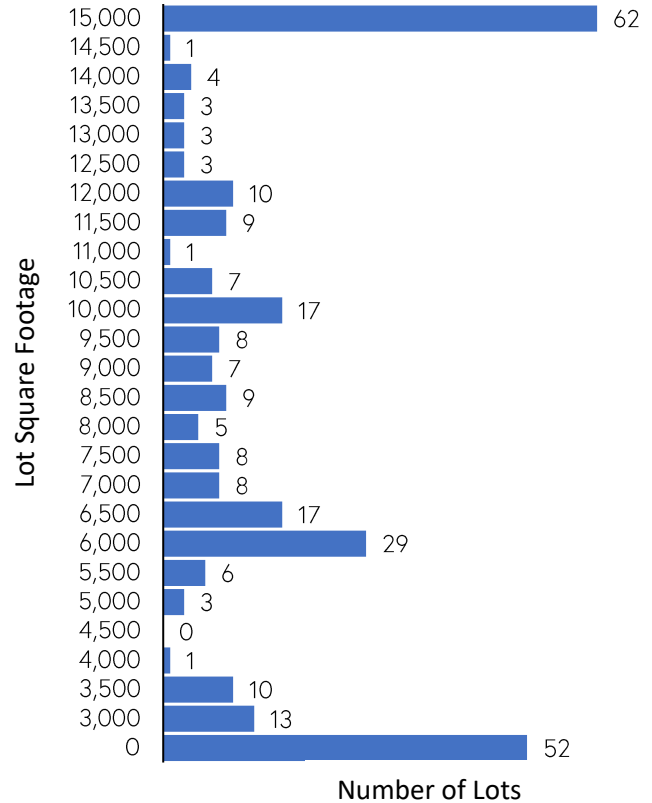
30%

Typical Lot Width:

55 – 90 feet

Typical Front Setback:

30 feet, varies



Building Form

Median FAR:

0.19

Typical Building Height:

1-2 stories (mostly 1 or 1.5 stories)

Garages and driveways:

- Front loaded garage (single and double)
- Some houses do not have garages or have detached garages set back from street

Roof Form:

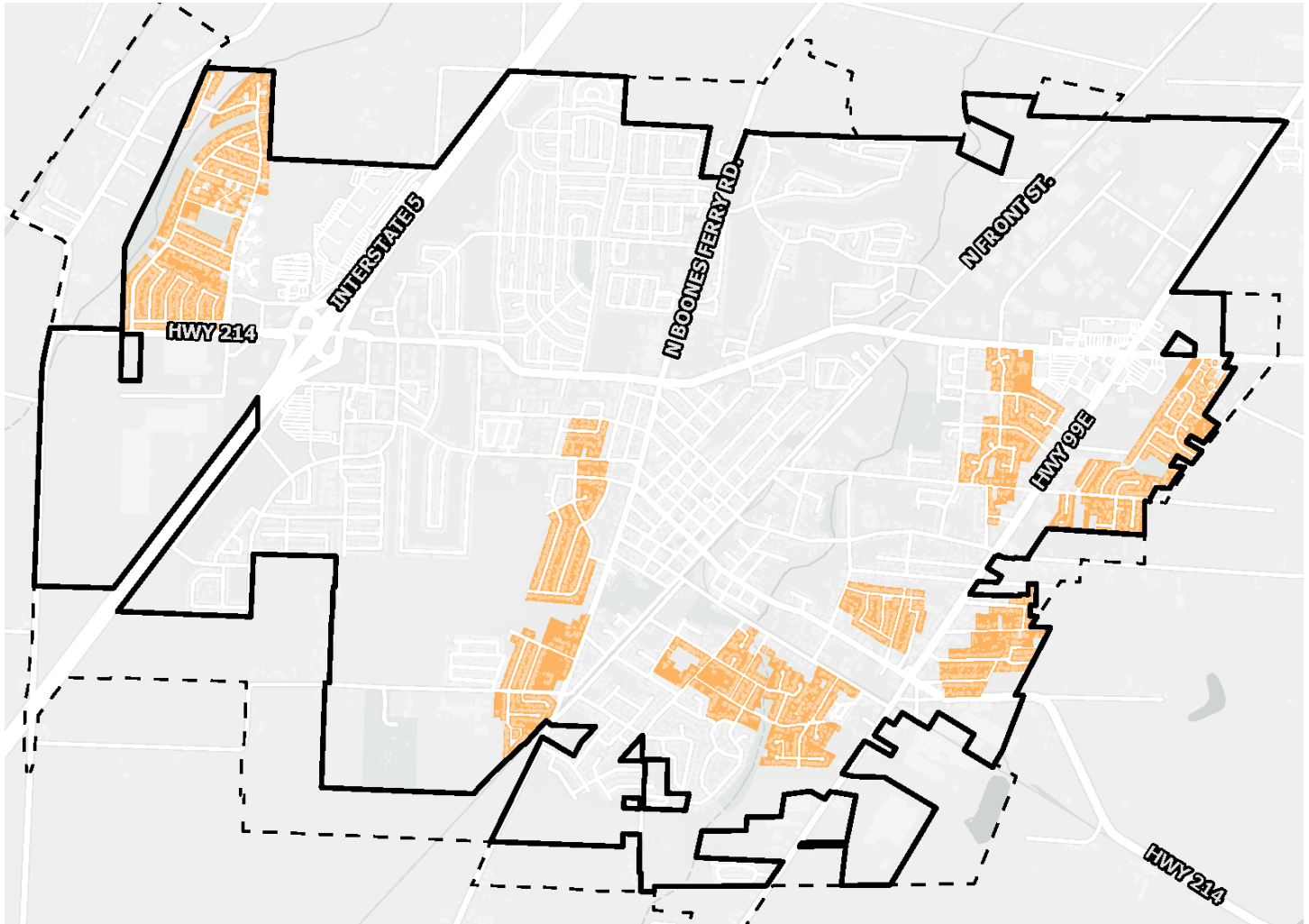
- Varied – gabled and hip styles with low to high pitches.
- Prominent eaves on some homes

Façade Elements:

- Varies primarily based on age of home, era of development



Pattern Area: Midcentury Ranch



Era of Development

Typical Year Built:

1940-2000

Median Year Built:

1975



Blocks and Streets

Street Network:

Curvilinear, Modified Grid, and Disconnected Suburban Curvilinear

Presence of Alleys:

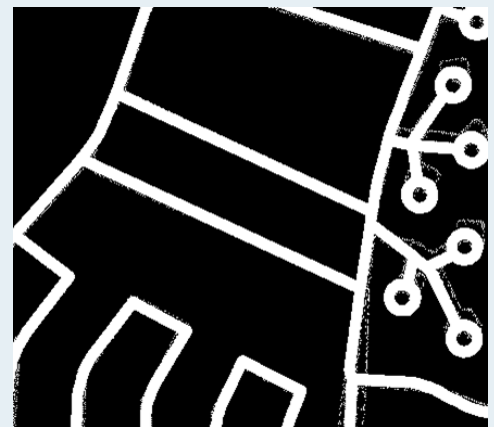
None

Presence of Sidewalks:

None

Presence of Street Trees:

Private ROW only, trees of mixed ages (mostly older)



Example of street network found in this pattern area

Pattern Area: Midcentury Ranch

Lot Patterns and Building Placement

Typical Lot Size:

6,000 sf (60 sf x 100 sf)

6,500 sf (65 sf x 100 sf)

Median Lot Size:

8,015 sf

Median Lot Coverage:

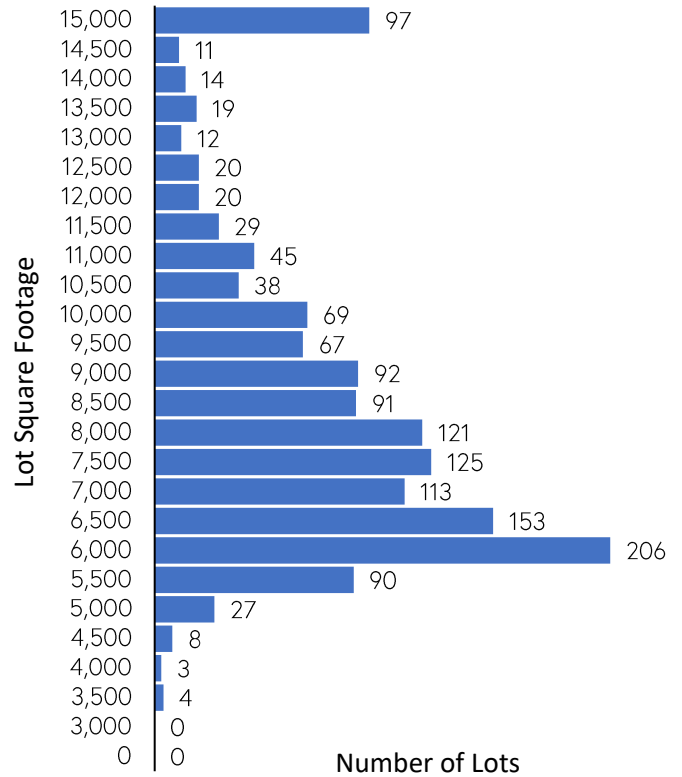
32%

Typical Lot Width:

65 – 90 feet

Typical Front Setback:

30 feet



Building Form

Median FAR:

0.18

Typical Building Height:

1-story

Garages and Driveways:

- Front loaded (single and double)
- Even with front facade

Roof Form:

- Gabled with low pitch
- Shallow or moderate eaves

Façade Elements:

- Slightly recessed entry
- Horizontal lap siding most common, some vertical siding
- Horizontal window proportions more common than other areas





MIDDLE HOUSING IMPLEMENTATION PROJECT **CODE CONCEPTS REPORT**

March 15, 2021
DRAFT



Attachment 3

Table of Contents

Background	3
Code Concepts	4
1. Minimum Lot Size	4
2. Building Size and Bulk	7
3. Architectural Design	9
5. Off-Street Parking and Garage Requirements	14
6. Driveways and Garage Design	15
7. Cottage Cluster Standards	18
8. Neighborhood Character Areas	19
9. Code Incentives	20

Background

PURPOSE

The purpose of this Code Concepts Report is to outline a set of conceptual options for the City to implement development code amendments in order to comply with House Bill 2001 (“HB 2001”) and its associated administrative rules (OAR Division 46, Middle Housing). HB 2001 requires the City to allow duplexes on every lot where a single-family house is allowed and to allow other middle housing types (triplexes, quadplexes, townhouses, and cottage cluster housing) in most areas where single-family housing is permitted.

Feedback on these code concepts from the community, stakeholders, and policymakers will be considered in drafting code amendments. This report and the associated public and stakeholder engagement activities are a critical step in creating code regulations for middle housing which both comply with state requirements and support the City’s broader goals for residential development.

This report is part of a larger body of work for the Woodburn Middle Housing Implementation Project. The recommendations and options identified herein are based on an audit of the Woodburn Development Ordinance (WDO) for compliance with HB 2001 and Division 46. For more information on these requirements and the findings of the audit, see the Background Report.

ORGANIZATION

This report is organized in nine (9) sections associated with implementation of middle housing code regulations:

1. Minimum Lot Size
2. Building Size and Bulk
3. Architectural Design
4. Landscaping and Open Space
5. Off-Street Parking and Garages
6. Driveways and Garage Design
7. Cottage Cluster Standards

8. Neighborhood Character Areas
9. Code Incentives

Within each section, background information is provided on the existing requirements of the WDO and the nature of the amendments that are required to comply with Division 46. Then a set of potential code concepts is described. The concepts are usually mutually exclusive options but may also be concepts that can be combined together. Following these descriptions, an evaluation of the concepts is presented in table form. The evaluation focuses on three criteria:

1. **Housing Options and Affordability:** The concepts are analyzed for their impact on the economic feasibility of developing new housing. The concepts are also assessed based on their impact of the cost of development and potential affordability of new middle housing.
2. **Compatibility and Design:** The concepts are evaluated for their effectiveness in creating new middle housing that is compatible with the character of existing neighborhoods in Woodburn and for producing high-quality design outcomes.
3. **Administration and Compliance:** The concepts are assessed for how they may affect the complexity of administering and using the code. Additionally, it is noted how the concept can be approved for compliance with Division 46 by DLCD:
 - “Track 1” approval means the concept meets the minimum compliance standards of Division 46.
 - “Track 2” approval means the concept does not meet minimum compliance standards and thus is subject to alternative approval process. This process requires the City to demonstrate that any proposed standards will not cause “unreasonable cost or delay” to middle housing development.

Code Concepts

1. MINIMUM LOT SIZE

Background

One of the most important policy decisions related to middle housing is the minimum lot size that will be required for each middle housing type. Minimum lot sizes determine where middle housing can be developed. Minimum lot sizes also influence the cost and feasibility of development by determining the number of lots where middle housing can be developed and the amount of land that must be acquired for development.

Division 46 rules include limits on minimum lot sizes. These limits are intended to prevent cities from requiring unnecessarily large lots for middle housing.

Code Concepts

Given the limitations of the Division 46 rules, the City has two options for minimum lot size standards. These options are summarized below.

Concept 1: Larger Lots for Middle Housing

The WDO currently requires larger lots for middle housing types, such as a duplex, than single-family detached housing. This approach is based on the idea that a multi-unit building requires a larger site in order to be compatible with a single-family house.

In terms of visual compatibility, this idea is not well-supported. There are many examples of duplexes, triplexes, or quadplexes on the same size lots as surrounding single-family houses and they can “blend in” to these neighborhoods effectively. The key factors that affect whether the building is compatible with surrounding houses have more to do with the design of the building itself, how and where parking is sited, and the size and massing of the building.

In terms of how a multi-unit building functions on a smaller vs. larger lot, there may be some differences between a quadplex on a 6,000 square foot lot and a quadplex on a 7,000 square foot lot.

It is possible that neighbors may perceive more activity on the smaller lot because more of the site may be utilized for the building, parking areas, or outdoor areas that are actively used by residents. There may be less visual screening or a sense of separation between properties on a smaller lot, particularly if existing vegetation must be removed and new trees or vegetation are difficult to accommodate. However, many of these impacts can be effectively mitigated by development and design standards related to landscaping, building size, orientation, and other site planning issues.

Table 1 shows the minimum lot size standards that would apply under Concept 1. These standards are set at the highest minimum lot size that is permitted under Division 46 rules. It is important to note that the minimum lot size for the middle housing types are not significantly larger than the minimum lot size for single-family houses in most zones. The difference in minimum lot size ranges from 1,000 to 3,400 square feet. In most cases, the difference is between 1,000-2,000 square feet.

Table 1: Example of Minimum Lot Size Standards under Concept 1: Larger Lots

Housing Type	RS	RSN	R1S	RM	RMN
Single-family	6,000	4,000	3,600	6,000	4,000
Duplex	6,000	4,000	3,600	6,000	4,000
Triplex	6,000	5,000	5,000	6,000	5,000
Quadplex	7,000	7,000	7,000	7,000	7,000
Cottage cluster	7,000	7,000	7,000	7,000	7,000
Townhouse	1,500	1,500	1,500	1,500	1,500

Note that the minimum lot size for a duplex must be no greater than a single-family house and minimum lot size for a townhouse must be no greater than 1,500 square feet under Division 46 rules.

Concept 2: Same Size Lots for Middle Housing

As an alternative to Concept 1, the City could allow for most or all middle housing types on the same size lots as single-family houses. This concept is based on the principle that it is not necessary to require additional land area to ensure that middle housing is compatible with single-family houses. Alternatively, regulations would focus more on the size and design of the building or the site and less on the number of dwelling units or housing type.

Table 2 presents an example of minimum lot size standards that could apply under Concept 1. Note that minimum lot sizes may continue to vary by zone, but minimum lot size for most middle housing types in most zones would be identical to that of a single-family house.

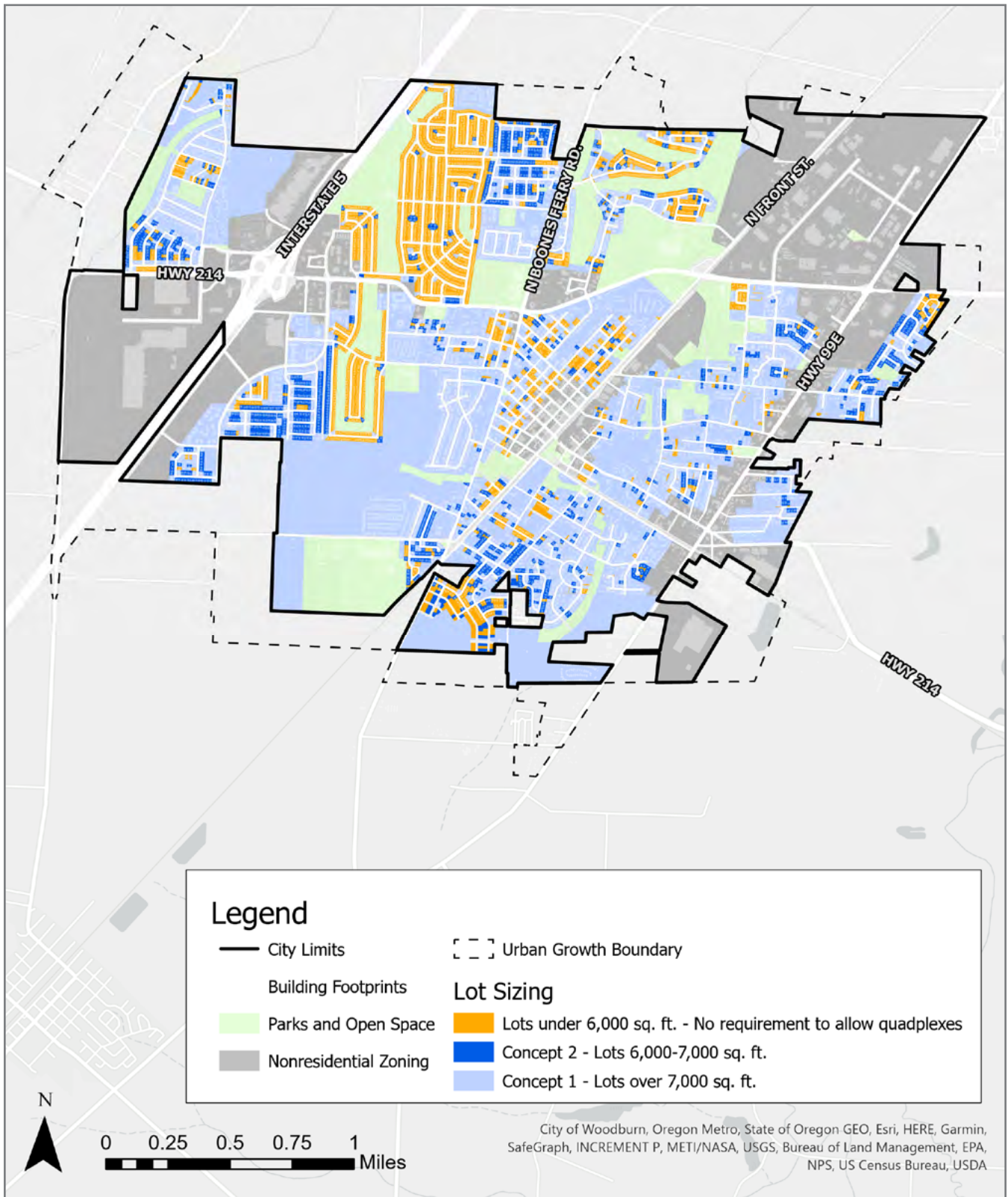
Table 2: Example of Minimum Lot Size Standards under Concept 2: Same Size Lots

Housing Type	RS	RSN	R1S	RM	RMN
Single-family	6,000	4,000	3,600	6,000	4,000
Duplex	6,000	4,000	3,600	6,000	4,000
Triplex	6,000	4,000	3,600	6,000	4,000
Quadplex	6,000	4,000	3,600	6,000	4,000
Cottage cluster	6,000	6,000	6,000	6,000	6,000
Townhouse	1,500	1,500	1,500	1,500	1,500

Evaluation

Criteria	Concept 1: Larger Lots for Middle Housing	Concept 2: Same Size Lots for Middle Housing
Housing Options and Affordability	This concept negatively impacts housing options and affordability by limiting the number of lots where middle housing types could be developed. For example, Concept 1 would prohibit a quadplex from being developed on approximately 1,200 lots that would otherwise be eligible under Concept 2. See Figure 1 for a map of these lots.	Concept 2 is more supportive of housing options and affordability. More sites would be available for development. Also, the cost of land for a development project could be lower than under Concept 1 because less land area is required.
Compatibility and Design	Generally, a larger lot for a middle housing development would result in a density level that would be more similar to that of a single-family house. However, this difference is marginal when the additional lot area is 1,000-3,000 square feet.	Compatibility and design are addressed through controls on building size, height, massing, architecture, and landscaping rather than a minimum lot size standard.
Administration and Compliance	Concept 1 is slightly more complex to administer because minimum lot sizes vary by zone and housing type. Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).	Concept 2 is slightly simpler to administer because lot sizes vary less by housing type. Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).

Figure 1: Example Map of Eligible Lots, Comparison of Concept 1 and Concept 2



2. BUILDING SIZE AND BULK

Background

Middle housing buildings may be more likely to maximize the buildable envelope of any given site because they may include multiple units. There is a “natural limit” to the size of a single-family house because the market is small for very large houses (for example, houses over about 3,000 square feet). A developer may be more likely to maximize the size of a quadplex, however, in order to create four units that are a size that is attractive to a target market. For this reason, it is important for the City to consider whether current development standards, if applied to middle housing, would ensure housing of a compatible scale with existing single-family housing.

Code Concepts

Below are two conceptual options how the City might address the size and bulk of middle housing.

Concept 1: Apply Existing Standards (Larger Buildings)

The City could apply existing maximum height, minimum setback, and maximum lot coverage standards to middle housing developments. Figure 2 illustrates a possible building form if the size of the building is maximized within the limits of these standards. This visualization uses a 6,000 square foot lot and the development standards of the RS zone (WDO Table 2.02B). Table 3 summarizes key physical dimensions of this potential building. As illustrated, the existing RS zone standards allow for a fairly large overall building of up to nearly 5,000 square feet of gross floor area and 2.5-3 stories in height.

Concept 2: New Size and Bulk Limits

To reduce the disparity in size and bulk of new middle housing types compared to typical, existing single-family houses, the City could apply additional limits on the overall size or proportions of the building.

Figure 2 illustrates a potential building form that might be achieved by applying additional restrictions on the size and bulk of buildings. This visualization assumes a maximum floor area ratio (“FAR”) of 0.60 applies to the site. FAR is the ratio of the floor area of the building to the area of the site or lot. As a result, the building in Figure 2

cannot be any larger than 3,600 square feet. In this visualization, the building footprint is reduced but the height of the building remains at 2.5 stories. The overall proportion and scale of building is more consistent with the surrounding single-family houses.

A maximum FAR standard is the recommended approach for regulating size and bulk. FAR is relatively straightforward to measure and calculate for applicants and staff. FAR is also more flexible than more detailed bulk or massing regulations that attempt to more directly regulate the shape of the building.

Figure 2: Visualization of Building Size and Form Concepts

Concept 1 - No Max FAR



Concept 2 - Max FAR of 0.60



Table 3: Building Size and Form Concepts Comparison

Dimensions	Concept 1	Concept 2
Lot Size	6,000 sf	6,000 sf
Gross Floor Area	4,892 sf	3,600 sf
Floor Area Ratio	0.81	0.60
Average Unit Size (4 Units)	1,223 sf	900 sf

Evaluation

Criteria	Concept 1: Apply Existing Standards (Larger Buildings)	Concept 2: New Bulk and Size Limits
Housing Options and Affordability	<p>Concept 1 would allow for larger overall buildings and larger dwelling units. This may encourage more development of middle housing if there is greater market demand for larger dwelling units.</p> <p>Larger units are more expensive, however, so this concept may not necessarily support housing affordability.</p>	<p>Concept 2 would encourage smaller buildings and dwelling units. The restrictions on building size may discourage development in some cases if the restriction results in smaller units that are less marketable than larger units. However, this issue can be mitigated by carefully setting the restrictions with consideration of achievable unit sizes.</p> <p>Smaller units tend to be less expensive, so this concept is more supportive of housing affordability.</p>
Compatibility and Design	<p>Concept 1 would allow new middle housing developments that are likely to be incompatible in size with existing single-family houses.</p>	<p>Concept 2 better addresses compatibility and design by requiring new middle housing to be compatible scale with existing, single-family housing.</p>
Administration and Compliance	<p>Concept 1 would be less complex to administer as it would not add any new dimensional regulations than are in place today.</p> <p>Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).</p>	<p>Concept 2 would be somewhat more complex to administer because a new dimensional regulation is required.</p> <p>Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).</p>

3. ARCHITECTURAL DESIGN

Background

The WDO currently includes a set of residential architectural design standards and guidelines (WDO Section 3.07). A similar set of design standards is applied to single-family dwellings and duplexes. “Medium density” residential buildings, which would currently apply to triplexes, quadplexes, and townhouses, are subject to a separate set of requirements.

Under Division 46, the City is limited to two options for regulating design of middle housing. The City may either apply the same design standards that apply to single-family housing or may apply the design standards of the DLCDC Model Code.

Code Concepts

Given the limitations of the Division 46 rules, three concepts are presented below for how the City might apply architectural design standards to middle housing.

Concept 1: Apply Single-Family/Duplex Standards

The City’s existing design standards that apply to single-family dwellings, duplexes, and manufactured dwellings could be applied to middle housing. Minor modifications would be required to ensure compliance with Division 46. The design standards must not scale by the number of dwelling units on the site or in the building, they must scale with form-based attributes of the building or site (such as the height or width of the building).

Concept 2: Modify Single-Family/Duplex Standards to Allow More Flexibility

The existing single-family/duplex design standards were written to apply to single-family houses and duplexes. While most of the standards are appropriate to apply to middle housing types, some standards prescribe a specific design treatment and may limit flexibility for a developer to propose an alternative design that still meets the underlying intent of the standards. Below are three examples of these standards:

- **Roof Pitch:** The existing standards require a pitched roof with a minimum slope of 4:12. This prohibits flat or low slope roofs. While flat roofs are uncommon in Woodburn, they may not be entirely incompatible with

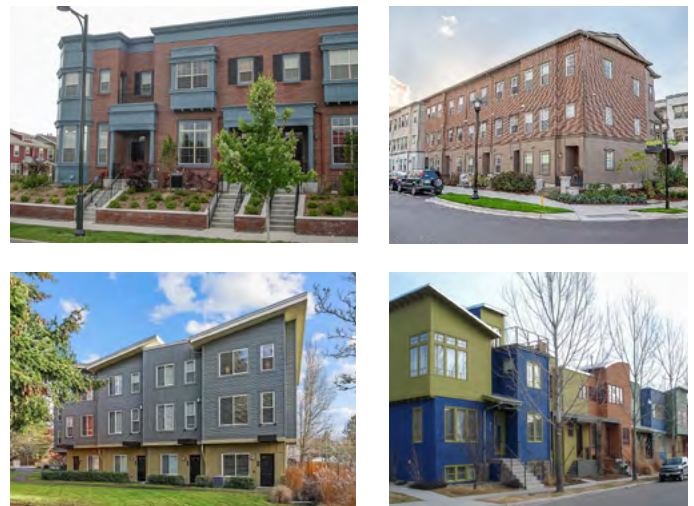
existing housing if they are given some level of architectural treatment.

- **Eaves:** The existing standards require eaves with a minimum depth of 12 inches. There are alternative ways to create an interesting roofline, such as a parapet or cornice.
- **Main Entries:** The existing standards require a porch or recessed entry. The intent of this standard is to mark the front entry as an important feature and to provide a transition from the street to the private realm of the house. Alternative ways of achieving this intent include an enclosed patio, a stoop, additional landscaping, pillars or other elements to frame the entry, among other treatments.

Figure 3 presents a few examples of middle housing buildings which would not meet several of the existing design standards, but may be compatible with existing housing stock in Woodburn.

Under this concept, the existing single-family/duplex design standards would be modified and/or expanded to provide additional options for design approaches. The standards would be written to achieve a similar intent as the existing design standards, but allow for treatments which would currently not be permitted under the existing standards.

Figure 3: Examples of middle housing that would not comply with existing single-family/duplex design standards



Concept 3: Apply DLCDC Model Code Standards

Another option is for the City to make no amendments to existing single-family/duplex design standards and to adopt the design standards of the DLCDC Model Code (“Model Code”) for triplexes, quadplexes, and townhouses. The Model Code standards address many similar elements as the City’s existing single-family/duplex design standards.

See Table 4 for a comparison of the two sets of standards. The main difference is that the Model Code does not regulate roof pitch, roof materials, eaves, or exterior materials. The Model Code regulates main entrances and facade articulation in a slightly different manner than the WDO single-family/duplex standards, but achieves a similar intent.

Table 4: Comparison of Existing Design Standards with DLCDC Model Code Standards

Regulated Design Element(s)	Existing Single-Family/Duplex Design Standards (Concept 1 and 2)	DLCDC Model Code Design Standards (Concept 3)
Roof pitch	Yes, minimum 4:12	No
Roof materials	Yes	No
Eaves: Minimum depth	Yes, 12 inches	No
Exterior materials	Yes	No
Attached garages: Prefer side or rear orientation	Yes	Yes
Attached garages: Maximum width or area	Yes - max width 50%, max area 65%	Yes - max width 50%
Detached garages: Minimum setback	Yes - 20 feet from front facade	Yes - must be separated from the street by a dwelling
Main entrance: Must face the street	Yes	No - options include: face street, 45 degree angle to street, or open to a porch or common open space
Main entrance: Maximum setback	No	Yes - 8 feet from front facade
Main entrance: Must have porch or recessed entry	Yes	No
Windows: Minimum area	Yes - 15%	Yes - 15 %
Facade/roofline articulation	Yes - three options: articulated roofline, gable/dormer, facade offset	Only applies to townhouses - one articulating feature per unit

Criteria	Concept 1: Apply Existing Single-Family/Duplex Standards	Concept 2: Modify Existing Standards to Allow More Flexibility	Concept 3: Apply DLCD Model Code Design Standards
Housing Options and Affordability	Some standards may discourage some developers if they are seen as too prescriptive. The articulation standard may add to the cost of development	Concept 2 would better support opportunities for development by providing more flexibility. There may also be an opportunity to reduce the cost of complying with the design standards by modifying more costly standards.	The Model Code standards are generally supportive of housing options and affordability. There are few prescriptive standards and flexibility for lower cost design options.
Compatibility and Design	Concept 1 would produce middle housing that is most similar to existing single-family housing. Key features include pitched roofs, eaves, and porches/recessed entries.	Concept 2 could produce middle housing that is less similar to existing single-family housing. However, if written carefully, the standards would ensure new housing is broadly compatible with existing housing even if certain features are different.	The Model Code standards may be least likely to produce compatible middle housing development. They offer flexibility but do not regulate some key features, such as articulation (for triplexes and quadplexes) and roof style.
Administration and Compliance	Administration would be most simple as the existing standards change the least. Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration is slightly more complex as it may include new standards and approaches. Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration is similar to Concept 1 or less complex as the standards regulate fewer design elements. Additionally, the City would not be required to modify existing single-family/duplex design standards. Concept 3 meets Division 46 minimum compliance standards (“Track 1” approval).

4. LANDSCAPING AND OPEN SPACE

Background

The City currently does not require any minimum landscaping or open space for single-family dwellings and duplexes, except for the planting of street trees and protection of existing significant trees (WDO Section 3.07).

For multi-family housing, the WDO applies these same standards, as well as a minimum amount of landscape plantings on the site, including setbacks adjacent to the street, buffer yards, off-street parking areas, common area, and other yards. The WDO also requires a minimum amount of private and common open space be dedicated on multi-family housing sites.

This approach must be amended as middle housing types are not permitted to be subject to more intensive landscaping or open space standards than single-family housing under Division 46 rules.

Code Concepts

Below are three conceptual options for how the City could apply landscaping and open space requirements to middle housing. The three concepts are illustrated in Figure 4. The concepts are not exclusive alternatives and could be combined together.

Concept 1: Street Trees and Significant Trees (Existing Single-Family/Duplex Standards)

The City could apply the same landscaping and open space standards that currently apply to single-family dwellings and duplexes. This would require all middle housing developments to plant street trees and to conform with the requirements associated with protecting existing significant trees.

Concept 2: Front Yard Landscaping

In addition to the requirements under Concept 1, the City could apply a more limited set of minimum site landscaping standards to middle housing as well as single-family dwellings. If compatibility of middle housing with existing single-family housing stock is an important goal, then it would be appropriate to require a minimum amount of landscaping in front yards, which are most visible from the street and would help to “soften the edges” of new development.

Current WDO standards for multi-family housing require 1 plant unit for every 15 square feet for setback areas abutting a street. For a 60-foot wide lot with a 20’ front setback, excluding a driveway, this would require approximately 50-60 plant units, which equates to either 7-8 medium sized trees or 25 large shrubs. This requirement is too high for a residential front yard, so a lower standard for single-family housing and middle housing would be appropriate.

Concept 3: Common Open Space

WDO Section 3.07.05 currently requires a minimum amount of both private and common open space for multi-family housing. This requirement would currently apply to triplexes and quadplexes. If dedicated open space is a priority for middle housing, then it would be appropriate to require a minimum amount of common open space. It is not permissible under Division 46 rules to require a minimum amount of private open space because this standard would scale by the number of dwelling units on the site.

A minimum common open space requirement of 300-500 square feet per lot would be appropriate for middle housing types. The standard would apply equally to a single-family dwelling or a quadplex, so the per-unit equivalent would range from 75-125 square feet per unit for a quadplex to 300-500 square feet per unit for a single-family dwelling or townhouse.

This common space would be required to be surfaced so it is usable for outdoor recreation or relaxation, such as with a grass lawn or pavers. In most zones, this minimum open space could easily be accommodated in the required rear yard area, which would be approximately 900-1200 square feet on the smallest lot, depending on whether any accessory structures are present.

Figure 4: Landscaping and Open Space Code Concepts

Concept 1: Street Trees and Significant Trees

Concept 2: Front Yard Landscaping

Concept 3: Common Open Space



Evaluation

Criteria	Concept 1: Street Trees and Significant Trees	Concept 2: Front Yard Landscaping	Concept 3: Common Open Space
Housing Options and Affordability	This concept would have the least negative impact on housing options and affordability because it minimizes landscaping requirements.	This concept could have some impact on the cost of development, but this can be mitigated by carefully setting the standards so as not to impose unnecessary costs.	This concept would have minimal negative impacts on housing options and affordability so long as the amount of open space required or level of improvements is not more than outlined above.
Compatibility and Design	Concept 1 would do less to ensure compatibility with existing site landscaping. Established neighborhoods in Woodburn tend to have more mature landscaping in front yards. Under this concept, new development could include minimal or no landscaping.	This concept would help new middle housing to “blend in” to existing neighborhoods by ensuring that new housing includes some amount of landscape plantings in visible front yards. It would also help to “soften the edges” of more intense land uses.	This concept would have minimal impact on compatibility as most open spaces would be located in more private rear or side yards.
Administration and Compliance	Administration would be most simple as the existing standards change the least. Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration is slightly more complex as it will include new standards. Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration is slightly more complex as it will include new standards. Concept 3 meets Division 46 minimum compliance standards (“Track 1” approval).

5. OFF-STREET PARKING AND GARAGE REQUIREMENTS

Background

In order to meet new state requirements under Division 46, the City must reduce the number of off-street parking spaces that are required for middle housing. Currently, the City requires two (2) parking spaces for each residential dwelling unit. Under Division 46 rules, the City generally cannot require more than one (1) parking space per unit for middle housing.

The City currently requires garages for all single-family housing and for 50% of the parking spaces for multi-family housing. Under Division 46 rules, the City may not require garages for duplexes, triplexes, quadplexes, and cottage cluster housing. Garages may be required for townhouses.

Code Concepts

Given these limitations, no concept options are presented for the minimum off-street parking requirements. The code will be amended to comply with these requirements. However, two concepts

are presented for how the City can amend current garage requirements.

Concept 1: Eliminate Garage Requirements

If the City cannot require garages for duplexes, triplexes, quadplexes, and cottage cluster housing, then it may be seen as inequitable to apply that requirement to single-family dwellings, townhouses, and larger multi-family buildings. Under this concept, the City would not require garages for any housing type. When garages are provided by the developer, then certain design and dimensional standards may apply.

Concept 2: Require Garages Only for Single-Family Dwellings

If garages are a priority for the City, then the City could continue to require them for detached, single-family dwellings. Single-family dwellings are likely to continue to represent most new housing construction in the City even after the new middle housing allowances. Thus, functionally, most new housing units would continue to have garages.

Evaluation

Criteria	Concept 1: Eliminate Garage Requirements	Concept 2: Require Garages Only for Single-Family Dwellings
Housing Options and Affordability	This concept has a positive impact on housing options and affordability. Garages add to the cost of development and limit design flexibility.	This concept has a negative impact on housing options and affordability. Garages add to the cost of development. However, most new single-family houses are built with garages in other cities that do not require garages. Garages are often favored by homebuyers.
Compatibility and Design	In neighborhoods where garages are typical, this may result in developments that look different than existing housing, perhaps with more open parking areas or carports.	In neighborhoods where garages are typical, this may help to make new single-family dwellings more similar to existing housing. However, any new middle housing may be less similar as garages would not be required.
Administration and Compliance	This concept would simplify administration slightly as it removes a code requirement. Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).	This concept is similar as the current code in terms of administration. Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).

6. DRIVEWAYS AND GARAGE DESIGN

Background

The WDO generally applies the same vehicular access and driveway standards to single-family housing as would apply to middle housing types. This meets the minimum compliance standards of Division 46. Some minor amendments may be needed to ensure the standards scale by form-based attributes and not by the number of units and to clarify how the standards apply to middle housing.

One exception is the Nodal Overlay District, which requires all small lot single-family houses and single-family attached houses (townhouses) to have garages that are accessed from rear alleys. Standard single-family housing is not subject to this requirement. This requirement must be amended.

Code Concepts

In addition to the required amendment to the Nodal Overlay District, there may be opportunities to improve access, driveway, and garage standards to ensure equity of development opportunities across housing types and to improve design. The concepts below address these issues.

Concept 1: Allow individual driveways for triplexes/quadplexes

The WDO currently would only allow one driveway for a triplex or quadplex because the units are

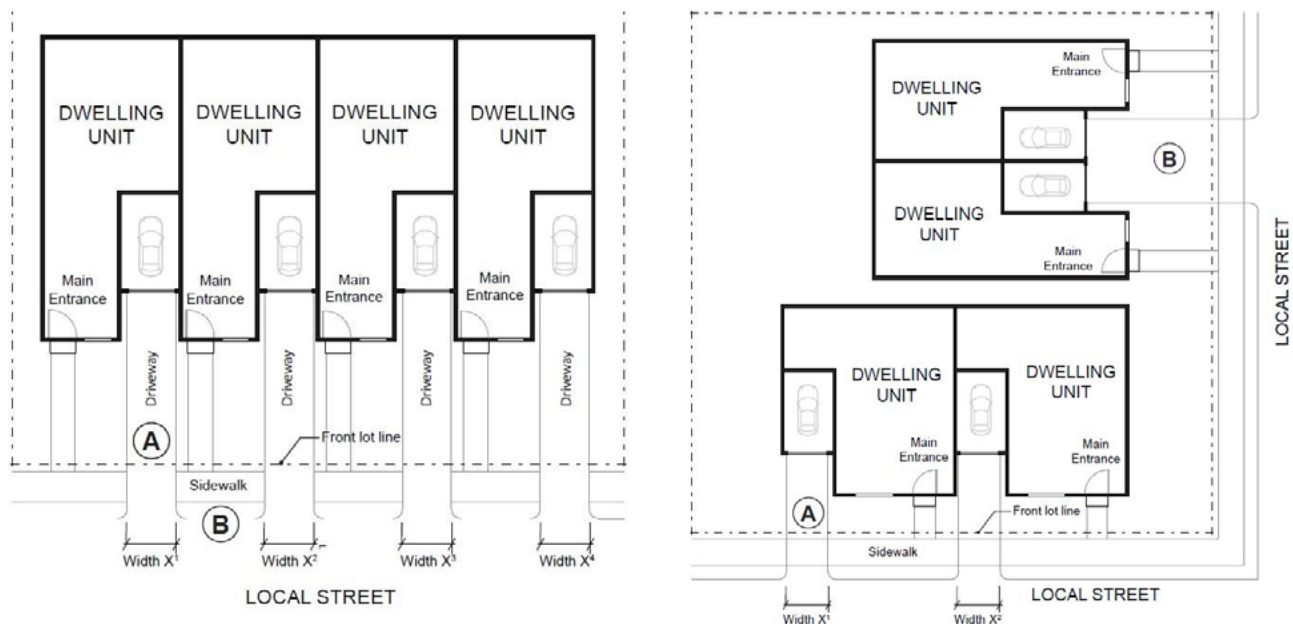
on one lot. WDO Section 3.04 (Vehicular Access) limits residential uses to one driveway per lot or one driveway for every 100 feet of lot frontage, whichever is greater. This means that a quadplex with four side-by-side units would only be allowed one driveway and therefore must have a shared driveway with parking on the side or rear of the building. This is not necessarily a poor outcome because it limits the visual impact of garages and the number of curb cuts facing the street.

However, a set of four townhouses, which may look identical to a side-by-side quadplex from the street, would be allowed to have four individual driveways because each unit is located on its own lot. This situation may incentivize development of townhouses over triplexes/quadplexes, which would generally favor development of ownership housing over rental housing. This could be seen as inequitable because it limits opportunities for rental housing development.

Under this concept, the City would allow for triplexes/quadplexes to have multiple driveways. The DLCDC Model Code allows for multiple driveways under the following conditions:

- The driveways must take access from a local street. If only access is to a collector/arterial, then must meet applicable driveway spacing standards.
- The combined width of the driveways is limited to 32 feet. This would allow for up to

Figure 5: Options for Driveway Access for Triplexes/Quadplexes, DLCDC Model Code



four (4) narrow driveways.

- If the driveways are separated, they must meet minimum spacing standards of the jurisdiction for local streets. This would preserve space between driveways for on-street parking.
- If the lot has frontage on an alley, access must be taken from the alley.

Concept 2: Require shared/rear access on corner lots or lots with alleys

On sites where it is more feasible to limit curb cuts and front-loaded garages, the City might consider requiring all developments to do so. There are two types of sites where this is usually more feasible.

First, on lots with two frontages (typically, lots on corners), the City could require a shared access driveway with rear-loaded garages or parking in the rear. The WDO currently requires lots that only have access to an arterial or collector to have shared access. Under this concept, the City would extend this requirement to all sites that have dual street frontages (usually corner lots).

The second situation where it is more feasible to limit front-loaded garages and individual driveways to each unit are on lots with alleys. There are few alleys in Woodburn today, however, the Nodal Overlay District requires alleys in new developments that include small lot housing or townhouses. These housing types are required to have garages that are accessed from alleys. Under this concept, the City would require rear access from an alley wherever alleys currently exist.

Concept 3: Require alleys with all new subdivisions or PUDs

As noted above, the City currently requires alleys only in the Nodal Overlay District. If it is a priority to encourage alley-access housing in more locations, the City could require alleys in all new subdivisions or PUDs where a street extension or new street is constructed.

Concept 4: Adopt design standards to mitigate the visual impact of garages

There will remain many sites where it is not feasible or practical to require shared or rear access. In these cases, garages and driveways will be prominent when viewed from the street.

The WDO design standards for single-family dwellings and duplexes currently limit garages to 50% of the width of the facade and 65% of the area of the facade. This standard will need to be amended slightly to allow for a garage on a narrower townhouse unit or triplex/quadplex unit. For example, Division 46 rules limit the minimum street frontage that can be required for townhouses to no greater than 20 feet. Assuming a 20-foot wide townhouse, a one-car garage (typically 12') would account for 60% of the width of the facade.

There are a number of design standards which can help to mitigate the visual impact of garages on narrower facades. Below is an example of a set of design standards intended to mitigate the visual impact of garages (City of Beaverton, Compact Detached Housing Standards). Figure 7 shows images of two garages that comply with these standards.

- The garage must be recessed behind the main facade by at least 1.5 feet
- The garage must include at least two of the following features:
 - Garage trellis or pergola extending at least 12 inches from the building face
 - Windows on 15% of the garage door
 - Decorative hardware
 - Natural wood finish
 - A recess of at least three (3) feet
 - Multiple material finishes or colors are used

Figure 6: Examples of Garage Design Elements



Criteria	Concept 1: Allow individual driveways for triplexes/quadplexes	Concept 2: Require shared/rear access on corner lots or lots with alleys	Concept 3: Require alleys with all new subdivisions or PUDs	Concept 4: Adopt design standards to mitigate the visual impact of garages
Housing Options and Affordability	This concept is supportive of housing options and development feasibility by providing option to serve each units with individual driveways.	This concept may have a minor negative impact on housing options and feasibility, but this can be minimized by only requiring shared/rear access on sites where it is truly feasible.	This concept would have a substantial impact on the cost of development by requiring additional improved alleys.	This concept would have a minimal impact on feasibility because the cost of compliance is relatively low.
Compatibility and Design	This concept may negatively impact compatibility and design if front-loaded garages are not common in an area.	This concept would further design goals to create appealing front facades. It may not be as important to compatibility in neighborhoods where front-loaded garages are already prominent.	This concept would further design goals to create appealing front facades.	This concept would further design goals to create appealing front facades.
Administration and Compliance	Administration of these new standards may be somewhat complex as it will be an exception to the current code requirement that limits sites to one driveway per lot. Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration of these new standards may be somewhat complex as it may not always be straightforward to determine which lots this standard applies to. Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration of these new standards may be somewhat complex as it may not always be straightforward to determine which projects/sites this standard applies to. Concept 3 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration of these new standards is simple as they are similar to many existing designs standards. Concept 4 meets Division 46 minimum compliance standards (“Track 1” approval).

7. COTTAGE CLUSTER STANDARDS

Background

The City does not currently define a “cottage cluster”. The WDO’s current development and design standards do not adequately address unique issues related to cottage cluster development. Therefore, it is recommended that the City adopt a new set of development and design regulations specific to this housing type.

Division 46 rules set out minimum compliance standards for cottage cluster housing. As with other housing types, the City may either apply the same design standards that apply to single-family housing or may apply the design standards of the DLCDC Model Code.

Code Concepts

Below are two conceptual options for how the City might adopt cottage cluster housing standards:

Concept 1: Adopt the DLCDC Model Code Standards

The DLCDC Model Code standards for cottage cluster housing are thoughtfully prepared and address the key issues which make cottage cluster housing an attractive form of residential infill development. The standards require smaller unit sizes, limit

cottages to 2 stories, apply design standards to ensure cottages are oriented to a common courtyard and parking areas are sited to reduce their visual impact from the street or the cottages. The Model Code standards incorporate many of the best practices of cottage housing design.

It is possible for the City to develop its own, unique set of cottage cluster standards but not recommended. If the City elected to do so, it would need to meet the “Track 2” approval criteria. This would require the City to submit findings to DLCDC to demonstrate that the proposed standards would not cause “unreasonable cost and delay”.

Concept 2: Adopt the DLCDC Model Code Standards and Apply Selected Single-Family Design Standards

The DLCDC Model Code cottage cluster standards do not address the architecture of the cottage buildings themselves. The standards focus predominantly on site design. Under this concept, the City would also apply a selected set of architectural design standards that apply to single-family dwellings today and will apply to other middle housing buildings in the future. These standards would regulate elements not addressed by the Model Code, such as roof pitch, roof materials, exterior materials, and facade articulation.

Evaluation

Criteria	Concept 1: Adopt the DLCDC Model Code Standards	Concept 2: Adopt the DLCDC Model Code Standards and Apply Selected Single-Family Design Standards
Housing Options and Affordability	The Model Code standards are generally supportive of feasible development opportunities and affordability.	Applying additional design requirements to cottage cluster housing, beyond those of the Model Code, could impose some additional costs on development. This issue can be minimized with careful code-writing.
Compatibility and Design	The Model Code standards address many key design elements that make cottage cluster housing a compatible form of infill with single-family housing.	By applying the same standards that apply to single-family dwellings and other middle housing to individual cottages, this concept would better achieve compatibility than Concept 1.
Administration and Compliance	The Model Code standards are well written and would be relatively easy to administer. Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).	Administration of the single-family design standards would be straightforward because they are currently used. The code may need to clarify how the standards apply to cottage housing in some cases. Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).

8. NEIGHBORHOOD CHARACTER AREAS

Background

Woodburn’s neighborhoods look and feel different from each other. They include areas built in the early 20th century with Craftsman and Victorian homes, mid-century subdivisions of one-story ranch homes on small lots, and contemporary subdivisions typically with larger, two-story homes. These patterns are described in detail in the Neighborhood Patterns Analysis in Section 3 of the Background Report.

However, new development in these diverse neighborhoods are often subject to the same residential design and development standards because they are in the same zoning district. This may result in new housing development which complies with the zoning requirements but is incompatible with the surrounding neighborhoods. This issue could be more prominent for infill of middle housing than single-family housing.

Code Concepts

Below are three concepts for how the City might regulate the form of new middle housing development to respond to the character of various neighborhoods:

Concept 1: Use Existing Zoning Districts

The City would continue to regulate development based on existing zone district boundaries. As noted above, this limits the City’s ability to tailor design and development standards to individual areas or neighborhoods within the broader zoning districts. For example, the R1 district includes areas in west Woodburn that are characterized by one-story ranch homes as well as areas in and around downtown Woodburn that can look quite different. See Figure 7 for images which illustrate some of these differences.

Concept 2: Modify Height and Bulk Standards by Character Area

One of the most noticeable differences across Woodburn’s neighborhoods is the size and proportions of houses. As noted above, it is recommended that the City implement new bulk and size controls generally. Under this concept, these regulations would vary based on

the predominant patterns of existing housing. For example, in areas where modestly sized one-story ranch houses are common, as was identified in the “Midcentury Ranch” pattern areas in the Background Report, maximum FAR and height standards may be adjusted down to better respond to this context of smaller houses that are more horizontally proportioned.

Concept 3: Modify Design Standards by Character Area

Under this concept, the City would tailor design standards by character area. This concept could be implemented in conjunction with Concept 2. For example, the City might require more steeply pitched roofs in the downtown Woodburn areas than in west Woodburn or other areas where ranch homes are common. Other design elements that vary by character area could include window proportions (vertical vs. horizontal), depth of eaves, amount of facade articulation, and style of main entrance (porch or recessed entry).

Figure 7: Example of Differing Neighborhood Patterns, Downtown Woodburn and West Woodburn



Criteria	Concept 1: Use Existing Zoning Districts	Concept 2: Modify Height and Bulk Standards by Character Area	Concept 3: Modify Design Standards by Character Area
Housing Options and Affordability	Concept 1 is generally supportive of housing options and affordability.	Concept 2 is generally supportive of housing options and affordability. However, by applying different standards in different areas, this may result in encouraging development in areas where the standards are seen as more favorable to development.	Concept 3 is generally supportive of housing options and affordability. Varying design standards by character area is less likely to influence where development occurs than under Concept 2 because height/bulk standards have a greater impact on market feasibility.
Compatibility and Design	As noted above, Concept 1 may result in middle housing that is incompatible in some neighborhoods but compatible in others within the same zone district.	Concept 2 advances compatibility further than Concept 1 by focusing on the most salient feature of new housing (size and proportions) and tailoring the relevant standards to local context.	Concept 3 advances compatibility in a similar manner as Concept 2 but may be less important because specific design elements are not as prominent as the overall size and proportions of a building.
Administration and Compliance	<p>Concept 1 is the most simple to implement and administer.</p> <p>Concept 1 meets Division 46 minimum compliance standards (“Track 1” approval).</p>	<p>Concept 2 would add complexity to the code and likely would require 2-3 new overlay zones or splitting existing base zones.</p> <p>Concept 2 meets Division 46 minimum compliance standards (“Track 1” approval).</p>	<p>Concept 3 would add complexity to the code and likely would require 2-3 new overlay zones or splitting existing base zones.</p> <p>Concept 3 meets Division 46 minimum compliance standards (“Track 1” approval).</p>

9. CODE INCENTIVES

Background

To further encourage new residential developments to achieve certain outcomes, the City could offer regulatory incentives in exchange for certain features. The incentives would be optional, but may be attractive to a developer if they provide a tangible benefit that outweighs the cost of complying with the requirements. Division 46 rules do not address the use of code incentives. So long as the incentive is truly optional then the City may structure incentives at their discretion.

There are two sides to an incentive program. The first is the benefit provided by the City. The most valuable benefits that can be provided to a developer are typically increased density, increased floor area, increased building height, or reduced

parking requirements. Each of these elements directly affect the feasibility and profitability of a development.

Considering the market for middle housing in Woodburn, it is recommended to offer either an increased density, increased floor area, reduced parking, or offer all as options. If the City decides to move forward with an incentive policy, then this benefit can be calibrated appropriately. At this stage it is important to consider the other side of an incentive program - the benefit provided by a developer.

Code Concepts

Below are four conceptual options for outcomes or benefits the City would require in exchange for a regulatory concession or “bonus” as discussed above.

Concept 1: Affordable Housing

An incentive is provided to developments that set aside some of the units for households with lower or moderate incomes and limit rent or sale prices to be affordable to those households.

Concept 2: Accessible Housing

An incentive is provided to developments that include units which are designed to be accessible to people with disabilities.

Concept 3: Tree Preservation

An incentive is provided to developments that preserve existing, significant trees on the site.

Concept 4: Design Quality/Features

An incentive is provided for developments that incorporate design features which go beyond the minimum requirements of the code.

Evaluation

Criteria	Concept 1: Affordable Housing	Concept 2: Accessible Housing	Concept 3: Tree Preservation	Concept 4: Design Quality/Features
Housing Options and Affordability	This incentive could have a significant impact on the feasibility of developing affordable housing units. However, the incentive must be significant due to the high costs of providing affordable units.	Similar to Concept 1, this incentive could positively impact housing options for people with disabilities or the elderly so long as it is calibrated accordingly.	The goal of this incentive is not to provide more housing options.	The goal of this incentive is not to provide more housing options.
Compatibility and Design	The goal of this incentive is not related to compatibility or design.	The goal of this incentive is not related to compatibility or design.	In neighborhoods with many significant trees that contribute to the character of the neighborhood, this incentive could help to preserve more of those trees.	This incentive could strongly support compatibility by offering a tangible benefit for a developer that takes extra steps to design housing to “fit in” with existing neighborhood character.
Administration and Compliance	Administration of this incentive would be somewhat complex. It requires implementing a deed restriction to ensure housing units remain affordable over time.	Administration of this incentive would be somewhat complex. It requires evaluating interior design features for compliance with accessibility standards, which the City may not do currently.	Administration of this incentive would be relatively simple. It requires another step in final inspection to ensure tree(s) were actually preserved during construction	Administration of this incentive would be relatively simple. It requires staff review of architectural design for compliance with some additional standards beyond the base requirements.



Technical Memorandum

To: Colin Cortes, City of Woodburn
From: Serah Breakstone, AICP
Copies: Jamin Kimmell, Cascadia Partners
Date: February 22, 2021
Subject: IBTER Audit Report
Project No.: 19896.00

The City of Woodburn is subject to House Bill 2001, which requires cities to update their zoning codes to implement middle housing in areas where single detached housing is allowed. If a city is concerned that existing infrastructure (water, sanitary sewer, stormwater and transportation) cannot support the additional density resulting from new middle housing units, it may submit an infrastructure-based time extension request (IBTER). Requests are submitted to and reviewed by the Department of Land Conservation and Development (DLCD) and must demonstrate either an existing or anticipated infrastructure deficiency that is directly linked to middle housing implementation. The rules for middle housing implementation and IBTERs are established in Oregon Revised Statutes, Chapter 660, Division 46¹.

In order to understand if Woodburn might have an infrastructure deficiency that would warrant an IBTER, the Otak team conducted audits of water, sanitary sewer, stormwater and transportation infrastructure. The audits were based on existing and available information provided by the City, and on stakeholder interviews and conversations with City staff. No new studies or analyses were conducted as part of this work. This memo provides the findings from those audits.

Overall, the audits did not reveal infrastructure deficiencies that could be directly linked to development of middle housing units. While there are some infrastructure issues in the City, and some planned improvement projects, there was not enough evidence or information to demonstrate that those infrastructure issues would be impacted or made worse by the incremental increase in middle housing units.

¹ <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=5988>

Attachment 4

TRANSPORTATION

Infrastructure Specific Overview

An audit of Woodburn's transportation network was performed to determine if there are any portions of this network that would be measurably and negatively impacted by the allowance of middle housing in areas zoned exclusively for single family residential. This assessment was based on a review of key City and State (ODOT) owned roadways within the Woodburn urban growth boundary (UGB), a review of available infrastructure plans and studies, and discussions with key City staff. In summary, it was concluded that the allowance of middle housing is unlikely to create measurable operational/safety impacts to the overall transportation network. Additional details are provided in the following sections.

Documents/Information Reviewed

To assist in the audit of the transportation network, the following documents and individuals were reviewed and/or consulted:

- *City of Woodburn 2019 Transportation System Plan (TSP)* - The Woodburn TSP was last updated and adopted in 2019. It guides the near- and long-term management and development of all transportation facilities in Woodburn. This document was reviewed to determine the existing and projected roadway infrastructure deficiencies and how those deficiencies are planned to be addressed. <https://www.woodburn-or.gov/dev-planning/page/transportation-system-plan-tsp-2019-2039>
- Traffic Impact Studies were reviewed for the following recent development projects to learn more about how recent development projects were projected to impact the transportation network.
 - Woodburn Eastside Apartments <https://www.woodburn-or.gov/dev-planning/project/annexation-anx-2019-01-woodburn-eastside-apartments-2145-molalla-road-ne>
 - Pacific Valley Apartments <https://www.woodburn-or.gov/dev-planning/project/design-review-dr-2019-03-pacific-valley-apartments-1310-1340-n-pacific-highway>
 - Smith Creek <https://www.woodburn-or.gov/dev-planning/project/smith-creek-development-annexation-planned-unit-development-subdivision-105-690>
 - Woodburn Urgent Care <https://www.woodburn-or.gov/dev-planning/project/design-review-dr-2020-06-woodburn-urgent-care-tom-tenant-dr>
 - Allison Way Apartments <https://www.woodburn-or.gov/dev-planning/project/design-review-dr-2019-05-allison-way-apartments-stacy-allison-way>
- Tukwila Homeowners Association Covenants, Conditions, and Restrictions (CC&Rs) – The CC&Rs were reviewed for the various associations that make up the Tukwila neighborhood to determine if they have formal language noting the allowance or restriction of middle housing types. <https://tukwilahoa.com/>
- Phone interview with Chris Kerr, Woodburn Community Development Director
- Phone interview with Eric Liljequist, Woodburn Public Works Director

Summary of findings

In order to request a transportation-based time extension on the allowance of middle housing types, there are two justifiable circumstances as allowed under OAR [660-046-0340](#):

1. There are intersections or roadways that are currently operating/forecast to operate below acceptable mobility standards or have geometric/safety limitations that would be measurably impacted by the allowance of middle housing. Under this rationale, it would need to be shown that there is not an already identified/adopted mitigation plan within the local or regional transportation plan that would address the deficiency.

Findings

The City of Woodburn's Transportation System Plan was last updated in adopted in 2019. This multi-modal update of the city's circulation system was prepared using the most recent State of Oregon guidelines and best practices for preparing TSPs. As a result, it includes a detailed and recently updated list of roadway enhancement projects, intersection improvement projects, and local street connectivity plans that are expected to address existing and forecast operational/safety deficiencies both on the local and regional transportation network. A review of the single-family zoned areas of the city revealed that the major roadways and intersections serving these neighborhoods are addressed in the TSP project list. Furthermore, based on the conservative modeling efforts that went into the TSP development, it is unlikely that potential small or incremental pockets of middle housing within these areas would measurably impact the operations and safety of the supporting infrastructure network above and beyond already forecast levels.

2. There are residential areas that currently do not have adequate emergency vehicle access.

Findings

A review of the existing street network and conversations with City staff did not reveal any single-family residential neighborhood streets that do not meet current emergency vehicle access standards. Furthermore, the Woodburn TSP has a local street connectivity plan that conceptually identifies how future residential developments will connect to the existing roadway network. This will ensure that future residential streets will have adequate connectivity from a mobility perspective and from an emergency access perspective.

Although not explicitly stated in the IBTER rules, a third potential justification is in those residential neighborhoods that have Homeowners Associations (HOA) governed by CC&Rs. CC&Rs are legal documents that describe the requirements and limitations of what homeowners can do with their property. Sometimes they can include provisions that restrict the construction of housing types within the neighborhood that are inconsistent with the rest of the neighborhood (i.e. restricting townhomes or other more dense housing in a single-family neighborhood). If the CC&Rs were formally adopted prior to HB 2001 taking affect and they contain specific language restricting middle housing types, these restrictions can remain enforceable. If the CC&Rs were formally adopted prior to HB 2001 and they don't contain specific language restricting middle housing types, the respective HOA is not allowed to retroactively go back and revise their CC&Rs to restrict middle housing. In these situations, there could be potential future traffic demands or housing density issues that would negatively impact circulation or emergency services.

Findings

A review of available CC&R's from Woodburn's Tukwila neighborhood indicated that all of the various associations have CC&R's that either allow middle housing types or have CC&Rs that were formally adopted prior to the rules of HB 2001 that specifically exclude middle housing types. As such, there are no technicalities in the Tukwila neighborhood CC&Rs that would lead to future middle housing challenges. Although there are other HOA's with CC&Rs in Woodburn, their respective CC&Rs were not made available for review.

STORMWATER

Infrastructure Specific Overview

This audit contains a review of Woodburn's stormwater drainage infrastructure, which provides stormwater collection and conveyance for the City.

The audit is based on limited and outdated information provided by the City. No new analysis or study of stormwater infrastructure was conducted as part of this audit. The City Engineer confirmed that permits for residential infill development were not currently being denied on the basis of stormwater drainage deficiencies. Based on the available information, a significant stormwater deficiency related to potential middle housing development impacts was not able to be determined.

Documents/Information Reviewed

- Storm Drainage Master Plan – 1996, Chapters 7 and 11
These chapters continue to guide the stormwater policy and requirements for Woodburn. Most relevant to the IBTER and HB 2001 are the following:

Chapter 11, Section C. Extension of Drainage Services to Upstream Parcels - details how in new development, the developer needs to install drainage infrastructure sufficient to accommodate upstream flows as well (subsections 1-5).

"In general, any new development shall install closed conduit drainage conveyances [that] are of sufficient capacity and depth and are suitable to serve parcels which [are] topographically upstream of the development site. Such conveyances shall be sized to receive future post-development upstream, un-detained flows for a 25-year storm event in a Local Drainageway and a 50-year storm event in a Secondary Drainageway."

Chapter 11, Section G. Detention Requirement for Large Developments - outlines stormwater management requirements for larger development (greater than 2.5 acres of impervious cover) including single family development and multifamily development.

"Any new construction, or expansion of existing construction, for commercial, industrial, institutional, or multi-family development uses which creates greater than 2.5 acres of total impervious areas (not including public roads created as a part of the development) are required to provide onsite detention of storm flows. Any new single-family residential development larger than 5 acres (gross area, all phases), shall also provide onsite storm water detention facilities."

Chapter 11, Section H. Detention Requirement for Small Developments - outlines stormwater management requirements for small development, which would typically include infill middle housing development.

"Any new construction, or expansion of existing construction, for commercial, industrial, institutional, or multi-family uses which creates less than 2.5 acres of total impervious areas (not including public roads created as a part of the development) may be required to provide on-site detention to address downstream system capacity limitations, satisfy requirements of other jurisdictions, or mitigate local conditions which preclude full discharge of stormwater. At a minimum, the following information will be required for City staff review:

1. *Calculations of the volume and rate of stormwater runoff prior to and following development, done in conformance with City policy and the Storm Drainage Master Plan.*
2. *Identification of the closest public storm sewer or drainageway which will receive the runoff from the development.*

3. *Calculations showing the peak flow rate of storm water which will be discharged to the public system including any deleterious hydraulic impacts of stormwater runoff on downstream facilities (pipes, culverts, ditches, etc.)”*

According to the City, [Clean Water Services \(CWS\) Design and Construction Standards](#) or [Portland Bureau of Environmental Services \(BES\) Stormwater Management Manual](#) are acceptable standards for designing stormwater detention systems in Woodburn.

Summary of Contact:

After reading the supplied materials, a phone call on January 15, 2021, with Dago Garcia, PE, Woodburn City Engineer, provided an overview of the current stormwater drainage system. Based on that conversation, we learned that one of the main challenges the City faces related to drainage is that the topography is very flat and creates problems with positive drainage in conveyance, and that the storm system infrastructure was laid very shallow, which can cause issues during repairs and upgrades. The City also has open channels for stormwater conveyance, some on or behind private properties. In 2020, the Mill Creek Regional Detention Facility was completed. It's a large detention project built to address issues in the southwest corner of the City.

The City Engineer's office continues to use Chapters 7/11 as their stormwater guidance/policy. They also have data management systems in place such as asset management and GIS program to track capital projects and maintenance work. The Engineering and Maintenance groups work together to develop their "wish list" capital plans that are eventually included in an annual financial report.

The City Engineer also confirmed that single family and multifamily development permits are not currently being denied due to deficiencies in the stormwater drainage system.

Summary of findings

The City Engineer described examples of problem areas and capital improvement projects that were recently completed. Also, the City described their record keeping such as their asset management program, GIS mapping, and CIP project lists. These types of information can be analyzed for a future stormwater management planning and capital program development to address current issues and preemptively avoid future issues.

The City Engineer confirmed that building permits for single family and middle housing continue to be issued. The City also confirmed it directs developers and builders to CWS and BES stormwater management guidelines and requirements to ensure that detention systems are installed.

The City Engineer conveyed that there are plans to update the stormwater drainage plan in the next year.

Specifically, in comparison with the infrastructure thresholds established in OAR Division 46 (IBTER rules), the following conclusions related to stormwater infrastructure were made:

- (2)(a) – Lack of Stormwater Infrastructure
Based on a conversation with the City Engineer, middle housing would primarily be built in already developed areas. There was no indication that there is a lack of storm drainage infrastructure in these areas. Therefore, we assume lack of stormwater infrastructure is not an issue that would be impacted by middle housing development in Woodburn.
- (2)(b) - Downstream Stormwater Conveyance System Deficiency
Information on the presence or extent of any severe conveyance deficiencies was not provided by the City. Secondly, in Chapter 11, Section 6, the City's requirements for accounting for downstream conveyance is clearly stated. The City Engineer confirmed this chapter is still being utilized and therefore we assume this standard continues to be met. We also conclude that any present conveyance deficiencies are not severe enough to halt development, single family or middle housing or other, and so do not warrant an IBTER.

SANITARY SEWER

Infrastructure Specific Overview

The City of Woodburn's (City) wastewater infrastructure was audited to determine what, if any, facilities within the City's urban growth boundary (UGB) would be impacted by the implementation of middle housing in areas zoned for single family residential. This audit was based on a review of wastewater infrastructure owned and operated by the City. Specifically, the audit was accomplished by reviewing existing master plans and discussions with City staff. Ultimately it was concluded that middle housing is unlikely to create measurable impacts to the overall capacity of the wastewater infrastructure.

Documents/Information Reviewed

The following resources were used to complete the audit of wastewater infrastructure:

- 2010 Wastewater Facilities Plan and associated Capital Improvement Plan (CIP)
- City of Woodburn GIS system
- Middle Housing Project Plan
- City of Woodburn Comprehensive Plan
- Video conference interview with Eric Liljequist, Curtis Stultz, Dago Garcia, and Byron Brooks

Summary of findings

A sewer-based time extension request on the allowance of middle housing types, as permitted under OAR 660-046-0340, is justifiable under the following conditions:

A significant infrastructure deficiency in localized (not citywide) sanitary sewer service that results in unacceptable service levels for sewer services. For example, exceeding the capacity of existing infrastructure within a sanitary sewer system.

Wastewater infrastructure serving the City of Woodburn includes gravity collection, pumped conveyance systems, and a wastewater treatment plant (WWTP). The capacity and condition of these facilities were considered in the audit. The City's CIP identifies projects that are needed to improve system performance and, in some cases, increase capacity. Many of these projects are listed in the current Wastewater Facilities Plan while others have been added to the CIP since the facility plan was published. Our review of existing documentation and discussions with City staff identified four projects that are high on the City's priority list. Those projects are listed below.

1. Mill Creek Pipeline.
2. Stevens Pump Station and Force Main.
3. Front Street Pipeline Replacement.
4. Woodland Avenue Pipeline.

It is our understanding that each of these will address capacity as an aspect of the project. However, each is operable under current conditions. The addition of middle housing is not anticipated to create an unacceptable level of service for the sewer system.

A localized (not citywide) combined sewer/stormwater system that will exceed capacity as a result of new middle housing units. As further justification the local government shall demonstrate how it would mitigate the deficiency with respect to wastewater capacity and stormwater controls, if both aspects would not meet acceptable service levels. In this case, the local government shall include descriptions and justifications for the IBTER consistent with the requirements for each of the infrastructure types.

The City of Woodburn does not have a combined sewer / stormwater system; therefore, this threshold does not apply.

WATER

Infrastructure Specific Overview

The City of Woodburn's (City) water infrastructure was audited to determine what, if any, facilities within the City's urban growth boundary (UGB) would be impacted by the implementation of middle housing in areas zoned for single family residential. This audit was based on a review of water infrastructure owned and operated by the City. Specifically, the audit was accomplished by reviewing existing master plans and discussions with City staff. Ultimately it was concluded that middle housing is unlikely to create measurable impacts to the overall capacity of the water infrastructure.

Documents/Information Reviewed

The following resources were used to complete the audit of water infrastructure:

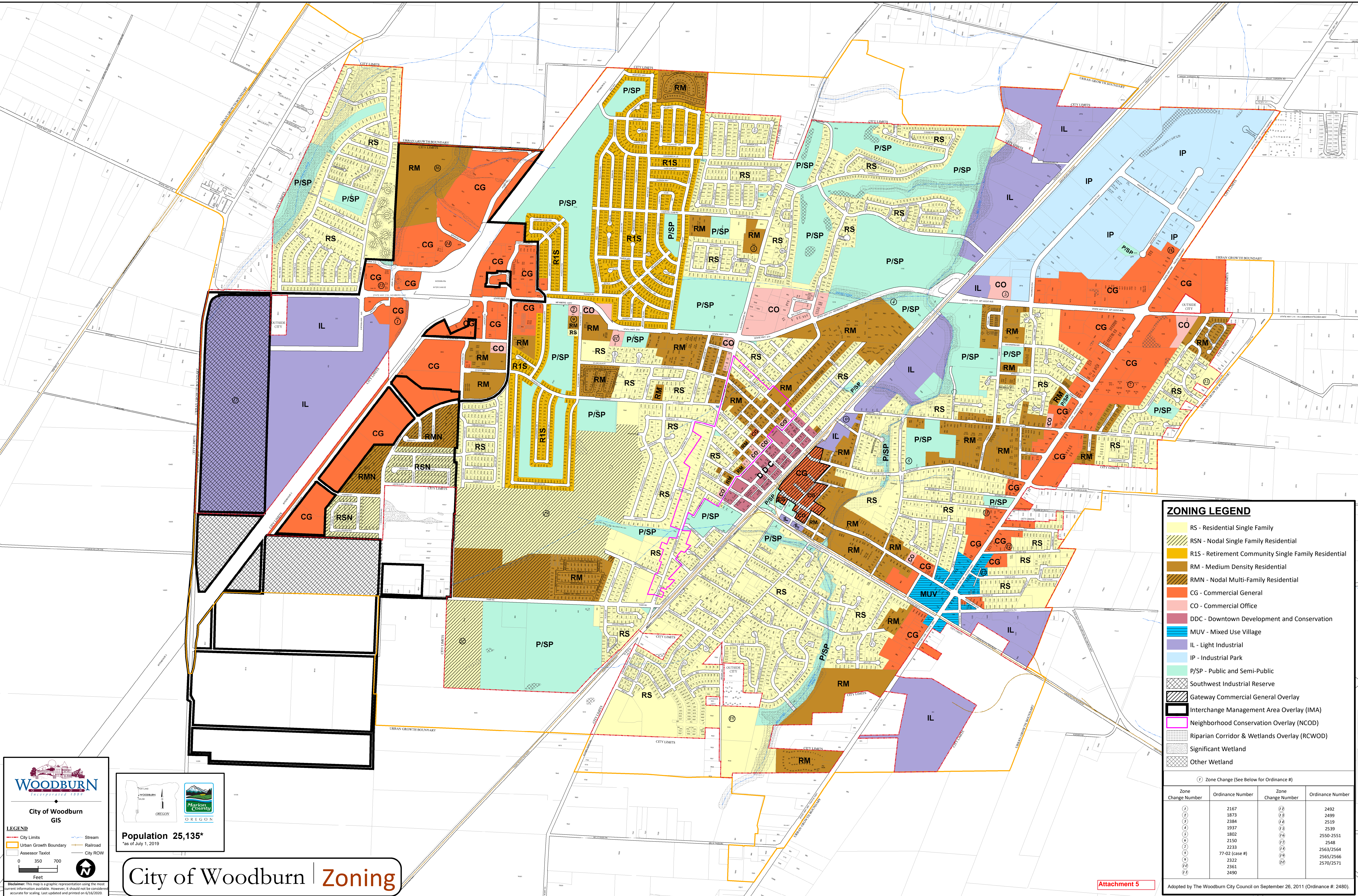
- 2018 Water System Master Plan (WSMP) and associated Capital Improvement Plan (CIP)
- City of Woodburn GIS system
- Middle Housing Project Plan
- City of Woodburn Comprehensive Plan
- Video conference interview with Eric Liljequist, Curtis Stultz, Dago Garcia, and Byron Brooks

Summary of findings

A water-based time extension request on the allowance of middle housing types, as permitted under OAR 660-046-0340, is justifiable under the following condition:

A significant infrastructure deficiency in localized (not citywide) water service that results in unacceptable service levels for water services. For example, maintaining minimum water pressure in a water system.

Water infrastructure serving the City of Woodburn includes transmission pipelines, pump stations, storage reservoirs and treatment systems. The capacity and condition of these facilities were considered in the audit. While there are required upgrades noted in the current Water System Master Plan, current capacity is being met and the CIP accounts for planned improvements. There do not appear to be any portions of the existing water system where minimum levels of service are not being met.



ZONING LEGEND

- RS - Residential Single Family
- RSN - Nodal Single Family Residential
- R1S - Retirement Community Single Family Residential
- RM - Medium Density Residential
- RMN - Nodal Multi-Family Residential
- CG - Commercial General
- CO - Commercial Office
- DDC - Downtown Development and Conservation
- MUV - Mixed Use Village
- IL - Light Industrial
- IP - Industrial Park
- P/SP - Public and Semi-Public
- Southwest Industrial Reserve
- Gateway Commercial General Overlay
- Interchange Management Area Overlay (IMA)
- Neighborhood Conservation Overlay (NCOD)
- Riparian Corridor & Wetlands Overlay (RCWOD)
- Significant Wetland
- Other Wetland

① Zone Change (See Below for Ordinance #)

Zone Change Number	Ordinance Number	Zone Change Number	Ordinance Number
①	2167	⑭	2492
②	1873	⑮	2499
③	2384	⑯	2519
④	1937	⑰	2539
⑤	1802	⑱	2550-2551
⑥	2150	⑲	2548
⑦	2233	⑳	2563/2564
⑧	77-02 (case #)	㉑	2565/2566
⑨	2322	㉒	2570/2571
⑩	2361		
⑪	2490		

City of Woodburn
Incorporated 1889

City of Woodburn GIS

Population 25,135*
*as of July 1, 2019

LEGEND

- City Limits
- Urban Growth Boundary
- Assessor Taxlot
- City ROW
- Stream
- Railroad

0 350 700 Feet

Disclaimer: This map is a graphic representation using the most current information available. However, it should not be considered accurate for scaling. Last updated and printed on 6/16/2020.

City of Woodburn | Zoning

CITY OF WOODBURN
Economic and Development Services Department

MEMORANDUM

270 Montgomery Street

Woodburn, Oregon 97071

(503) 982-5246

Date: March 1, 2021

To: Chris Kerr, Community Development Director

From: Ted Cuno, Building Division 

Subject: Building Activity for February 2021

	2019		2020		2021	
	No.	Dollar Amount	No.	Dollar Amount	No.	Dollar Amount
Single-Family Residential	3	\$380,012	0	\$0	23	\$5,913,459
Multi-Family Residential	0	\$0	0	\$0	0	\$0
Assisted Living Facilities	0	\$0	0	\$0	0	\$0
Residential Adds & Alts	3	\$69,410	1	\$3,000	3	\$64,068
Industrial	0	\$0	0	\$0	0	\$0
Commercial	5	\$496,620	3	\$460,574	2	\$105,041
Signs and Fences	0	\$0	0	\$0	0	\$0
Manufactured Homes	0	\$0	0	\$0	0	\$0
TOTALS	11	\$946,042	4	\$463,574	28	\$6,082,568
Fiscal Year to Date (July 1 – June 30)		\$27,062,727		\$15,018,651		\$29,879,984



Permits Issued

WOODBURN BUILDING DEPARTMENT
270 Montgomery Street
Woodburn, OR 97071
503-982-5246
FAX: 503-980-2496

www.ci.woodburn.or.us

2/1/2021 through 2/28/2021

Includes all valuations

building.dept@ci.woodburn.or.us

Record Types Selected: -All-

Commercial Alarm or Suppression Systems

971-20-000534-FIRE	Issued: 2/26/21	Fees: \$731.28	Valuation: \$16,200.00
Address: 1785 N FRONT ST, WOODBURN, OR 97071		Parcel: 051W07A 00600	
Owner: WOODBURN SCHOOL DISTRICT 103			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: Addition		
Work Description: Addition of addressable fire alarm system in new classroom building and CTE building at Woodburn High School			

Commercial Alarm or Suppression Systems	1 permits issued	\$731.28	\$16,200.00
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Permits Issued:

Commercial Mechanical

971-21-000055-MECH	Issued: 2/22/21	Fees: \$277.30	Valuation: \$5,000.00
Address: 1785 N FRONT ST, WOODBURN, OR 97071		Parcel: 051W07A 00600	
Owner: WOODBURN SCHOOL DISTRICT 103 WOODBURN HIGH SCHOOL			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: New		
Work Description: Install Gas Piping Per Plans			
971-21-000064-MECH	Issued: 2/8/21	Fees: \$2,168.34	Valuation: \$125,000.00
Address: 1800 W HAYES ST, WOODBURN, OR 97071		Parcel: 052W12DD06300	
Owner: WOODBURN SCHOOL DISTRICT 103 NELLIE MUIR ELEMENTARY SCHOOL			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: Addition		
Work Description: Mechanical system for an additional 4 classrooms at Elementary School.			
971-21-000065-MECH	Issued: 2/25/21	Fees: \$465.55	Valuation: \$12,120.00
Address: 970 N CASCADE DR, UNIT# 100, WOODBURN, OR 97071		Parcel: 052W12DA01700	
Owner: CITY OF WOODBURN			
Licensed Prof:			
Category of Construction: Commercial	Type of Work: Replacement		
Work Description: LIKE FOR LIKE REPLACEMENT GAS FURNACE 60K BTU, OF 2 TON A/C, AND 1.5TON HEATPUMP			

Commercial Mechanical	3 permits issued	\$2,911.19	\$142,120.00
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Permits Issued:

Commercial Structural

971-21-000067-STR Issued: 2/10/21 Fees: \$1,923.48 Valuation: \$104,000.00

Address: 1785 N FRONT ST, WOODBURN, OR 97071 Parcel: 051W07A 00600

Owner: WOODBURN SCHOOL DISTRICT 103 WOODBURN HIGH SCHOOL

Licensed Prof:

Category of Construction: Accessory Structure Type of Work: New

Work Description: Enclosure of the dust collecting system used for the new CTE shop. Enclosure is located in the new courtyard of the project.

971-21-000072-STR Issued: 2/18/21 Fees: \$206.70 Valuation: \$1,041.00

Address: 2600 PROGRESS WAY, WOODBURN, OR 97071 Parcel: 051W08A 02500

Owner: BURLINGHAM TRUST INC C/O RON PETERS

Licensed Prof:

Category of Construction: Commercial Type of Work: Repair

Work Description: Repair Small Area in the wall that the fire caused damage to. Affected one stud and one plate.

Commercial Structural 2 permits issued \$2,130.18 \$105,041.00

Permits Issued:

Residential 1 & 2 Fam Dwelling (New Only) Limited

971-20-000590-DWL	Issued: 2/23/21	Fees: \$15,442.89	Valuation: \$205,609.65
Address: 2525 Ben Brown DR, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 10			
971-20-000591-DWL	Issued: 2/23/21	Fees: \$16,099.41	Valuation: \$235,877.58
Address: 1918 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 119			
971-20-000592-DWL	Issued: 2/23/21	Fees: \$16,427.28	Valuation: \$252,742.65
Address: 1932 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 120			
971-21-000004-DWL	Issued: 2/23/21	Fees: \$17,507.82	Valuation: \$307,196.10
Address: 1945 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 58			
971-21-000005-DWL	Issued: 2/23/21	Fees: \$16,692.54	Valuation: \$266,943.09
Address: 1865 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 59			
971-21-000006-DWL	Issued: 2/23/21	Fees: \$17,677.69	Valuation: \$328,000.00
Address: 1787 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 60			

Permits Issued:

Residential 1 & 2 Fam Dwelling (New Only) Limited

971-21-000007-DWL	Issued: 2/23/21	Fees: \$16,701.04	Valuation: \$267,184.59
Address: 1751 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 61			
971-21-000008-DWL	Issued: 2/23/21	Fees: \$16,286.27	Valuation: \$258,000.00
Address: 1810 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 117			
971-21-000009-DWL	Issued: 2/23/21	Fees: \$15,071.78	Valuation: \$253,008.30
Address: 1818 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 118			
971-21-000030-DWL	Issued: 2/23/21	Fees: \$16,214.81	Valuation: \$243,994.98
Address: 2515 Ben Brown DR, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 11 NSFR 1798			
971-21-000031-DWL	Issued: 2/23/21	Fees: \$15,442.89	Valuation: \$205,609.65
Address: 2505 Ben Brown DR, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 12 NSFR 1495			
971-21-000032-DWL	Issued: 2/23/21	Fees: \$15,758.14	Valuation: \$220,489.50
Address: 2493 Ben Brown DR, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 13 NSFR 1610			

Permits Issued:

Residential 1 & 2 Fam Dwelling (New Only) Limited

971-21-000039-DWL	Issued: 2/23/21	Fees: \$15,872.13	Valuation: \$227,162.61
Address: 2254 Ben Brown DR, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 34 NSFR 1671			
971-21-000040-DWL	Issued: 2/23/21	Fees: \$16,223.30	Valuation: \$244,598.73
Address: 2502 Ben Brown DR, Woodburn, OR 97071		Parcel: 052W130000108	
Owner: SMITH CREEK LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Smith Creek Lot 141 NSFR 1798			
971-21-000041-DWL	Issued: 2/23/21	Fees: \$17,789.61	Valuation: \$307,327.11
Address: 796 Ostrom DR, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			
971-21-000042-DWL	Issued: 2/23/21	Fees: \$16,717.77	Valuation: \$262,827.54
Address: 754 Ostrom DR, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			
971-21-000043-DWL	Issued: 2/22/21	Fees: \$15,902.23	Valuation: \$223,374.24
Address: 712 Ostrom DR, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			
971-21-000044-DWL	Issued: 2/23/21	Fees: \$17,789.61	Valuation: \$307,327.11
Address: 795 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			

Permits Issued:

Residential 1 & 2 Fam Dwelling (New Only) Limited

971-21-000046-DWL	Issued: 2/23/21	Fees: \$16,397.34	Valuation: \$243,660.30
Address: 701 Ostrom DR, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			
971-21-000047-DWL	Issued: 2/23/21	Fees: \$15,507.16	Valuation: \$272,970.54
Address: 713 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			
971-21-000048-DWL	Issued: 2/23/21	Fees: \$16,454.28	Valuation: \$253,706.70
Address: 749 Ben Brown LN, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			
971-21-000049-DWL	Issued: 2/23/21	Fees: \$16,745.77	Valuation: \$262,875.84
Address: 667 Ostrom DR, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			
971-21-000050-DWL	Issued: 2/23/21	Fees: \$16,717.77	Valuation: \$262,972.44
Address: 743 Ostrom DR, Woodburn, OR 97071		Parcel: 052W130000100	
Owner: SMITH CREEK 2 LLC			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: NSFR			

Residential 1 & 2 Fam Dwelling (New Only) Limited	23 permits issued	\$377,439.53	\$5,913,459.25
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Residential Mechanical

971-21-000051-MECH	Issued: 2/1/21	Fees: \$100.80	Valuation: \$3,742.00
Address: 2743 FAIRWAY ST, WOODBURN, OR 97071		Parcel: 051W06CD03000	
Owner: HANK WERNER & HOLLY THAU TR & WERNER, HENRY W TRE & THAU,HOLLY R TRE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: INSTALL GF			
971-21-000052-MECH	Issued: 2/1/21	Fees: \$100.80	Valuation: \$10,451.00
Address: 757 FAIRWOOD CRESCENT DR, WOODBURN, OR 97071		Parcel:	
Owner:			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install gas furnace and air conditioner			
971-21-000056-MECH	Issued: 2/2/21	Fees: \$100.80	Valuation: \$11,983.00
Address: 255 S CASCADE DR, WOODBURN, OR 97071		Parcel: 052W12DD04600	
Owner: SUSAN M MCBRIDE LT 50% & MCBRIDE, SUSAN M TRE & JAMES L MCBRIDE LT 50%			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install Air Handler and Heat Pump			
971-21-000057-MECH	Issued: 2/2/21	Fees: \$100.80	Valuation: \$900.00
Address: 1999 JANSEN WAY 00, WOODBURN, OR 97071		Parcel:	
Owner:			
Licensed Prof:			
Category of Construction: Manufactured Dwelling	Type of Work: Alteration		
Work Description: Replace bathroom fan.			
971-21-000058-MECH	Issued: 2/2/21	Fees: \$100.80	Valuation: \$6,800.00
Address: 425 S CASCADE DR, WOODBURN, OR 97071		Parcel: 052W12DD03900	
Owner: GAINER, SHARON L			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: Replacement of a Heat Pump			
971-21-000068-MECH	Issued: 2/5/21	Fees: \$280.00	Valuation: \$0.00
Address: 1575 TOMLIN AVE, WOODBURN, OR 97071		Parcel: 051W17BD04900	
Owner: ARMSTRONG, KAREN A			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install 1 gas furnace. Install ducting servicing 3 bathrooms, 1 dryer vent, 1 kitchen hood exhaust. Install 3 gas lines servicing 1 furnace, 1 range, 1 water heater. Install 1 tankless water heater.			

Permits Issued:

Residential Mechanical

971-21-000069-MECH	Issued: 2/8/21	Fees: \$100.80	Valuation: \$10,000.00
Address: 2213 COUNTRY CLUB RD, WOODBURN, OR 97071			
Owner: PLAZA CENTER LLC			
Licensed Prof:			
Category of Construction: Other	Type of Work: New		
Work Description: New HVAC system			
971-21-000071-MECH	Issued: 2/8/21	Fees: \$100.80	Valuation: \$16,377.00
Address: 1237 GOOSE CREEK RD, WOODBURN, OR 97071			
Owner: JON & HEATHER HOLLAND RT & HOLLAND, JON B TRE & HOLLAND, HEATHER L TRE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install Gas Furnace and Air conditioner			
971-21-000074-MECH	Issued: 2/10/21	Fees: \$100.80	Valuation: \$0.00
Address: 1028 BROWN ST, WOODBURN, OR 97071			
Owner: PERKETT, AARON & MEISENHEIMER, KATELYN			
Licensed Prof: MELTON HEATING & AIR CONDITIONING INC			
Category of Construction: Single Family Dwelling	Type of Work: New		
Work Description: Install air conditioner			
971-21-000075-MECH	Issued: 2/9/21	Fees: \$100.80	Valuation: \$4,161.00
Address: 1590 TIERRA LYNN DR, WOODBURN, OR 97071			
Owner: HAMMILL, MARGARET E			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration	Census Code: Single Family Houses Detached	
Work Description: Install GF			
971-21-000077-MECH	Issued: 2/11/21	Fees: \$100.80	Valuation: \$4,500.00
Address: 1825 HARDCASTLE AVE, WOODBURN, OR 97071			
Owner: GRASSHAM TIMOTHY A GRASSHAM WENDI S			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: install gas insert			
971-21-000082-MECH	Issued: 2/11/21	Fees: \$100.80	Valuation: \$8,012.00
Address: 400 WORKMAN DR, WOODBURN, OR 97071			
Owner: PREDEEK JAMES BERNARD PREDEEK GLORIA			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install Gas Furnace			

Residential Mechanical

971-21-000083-MECH	Issued: 2/12/21	Fees: \$100.80	Valuation: \$10,784.16
Address: 1257 BERNARD DR, WOODBURN, OR 97071		Parcel: 051W07BD03700	
Owner: COLYER JEREMY A COLYER CINDY J			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: install furnace and ac			
971-21-000084-MECH	Issued: 2/12/21	Fees: \$100.80	Valuation: \$1,469.00
Address: 2569 GRAYSTONE DR, WOODBURN, OR 97071		Parcel: 051W07AA05000	
Owner: BRAMMEIER JUSTUS FRANKLIN BRAMMEIERHEATHER ANN			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: Remove/replace gas water heater			
971-21-000094-MECH	Issued: 2/16/21	Fees: \$100.80	Valuation: \$8,793.00
Address: 85 WORKMAN DR, WOODBURN, OR 97071		Parcel: 051W18BB02100	
Owner: LEON JOHN JOANN EHRENS LT EHRENS LEON JOHN TRE EHRENSJOANN TRE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install Gas Furnace			
971-21-000103-MECH	Issued: 2/18/21	Fees: \$100.80	Valuation: \$15,486.00
Address: 767 CORBY ST, WOODBURN, OR 97071		Parcel: 051W07DC11200	
Owner: MCKASSON REBECCA L			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install Furnace/AC			
971-21-000104-MECH	Issued: 2/18/21	Fees: \$100.80	Valuation: \$3,876.00
Address: 2803 REVERE ST, WOODBURN, OR 97071		Parcel: 051W06CD10500	
Owner: CORTES JOSE GIRON GUZMANERIKA JACUINDE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install Gas Furnace			
971-21-000105-MECH	Issued: 2/19/21	Fees: \$100.80	Valuation: \$10,853.00
Address: 1769 SALLAL RD, WOODBURN, OR 97071		Parcel: 052W12AA12900	
Owner: VAN WINKLE KAREN J			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: INSTALL GAS FURNACE AND A/C			

Residential Mechanical

971-21-000108-MECH	Issued: 2/19/21	Fees: \$100.80	Valuation: \$14,484.00
Address: 2575 BOSTON ST, WOODBURN, OR 97071		Parcel: 051W07BA13800	
Owner: PANTOJA-RAMIREZ MONSERRATA MADDEN PATRICK MADDEN KIMBERLY			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Installing Gas furnace and AC			
971-21-000109-MECH	Issued: 2/19/21	Fees: \$100.80	Valuation: \$10,716.00
Address: 1163 GOOSE CREEK RD, WOODBURN, OR 97071		Parcel: 051W07BD00800	
Owner: BARR WILLIAM S BARR MARY			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Installing GF and AC			
971-21-000110-MECH	Issued: 2/22/21	Fees: \$100.80	Valuation: \$12,000.00
Address: 3177 CAMAS ST, WOODBURN, OR 97071		Parcel: 052W12BC00700	
Owner: SMITH MARTHA B MACK CORA MARIE			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: INSTALL AH / HP			
971-21-000111-MECH	Issued: 2/22/21	Fees: \$100.80	Valuation: \$5,138.00
Address: 838 MEADOWVALE LN, WOODBURN, OR 97071		Parcel: 051W18DB08600	
Owner: BROWN SHANA A BROWN JUSTIN W			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install Gas Furnace			
971-21-000112-MECH	Issued: 2/22/21	Fees: \$100.80	Valuation: \$6,497.00
Address: 1025 STARK ST, WOODBURN, OR 97071		Parcel: 051W18DA05900	
Owner: WEISS HARRY L WEISS DEBORAH L			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Gas Insert & Gas Line			
971-21-000113-MECH	Issued: 2/23/21	Fees: \$100.80	Valuation: \$5,701.00
Address: 1341 AUSTIN AVE, WOODBURN, OR 97071		Parcel: 051W07CC11500	
Owner: JAMES DEREK C JAMES DOROTHY M			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: Install gas Furnace			

Permits Issued:

Residential Mechanical

971-21-000114-MECH Issued: 2/23/21 Fees: \$100.80 Valuation: \$4,224.00

Address: 1619 THOMPSON RD, WOODBURN, OR 97071

Parcel: 051W07BB07400

Owner: ECKDAHL LON ECKDAHL DIANA

Licensed Prof:

Category of Construction: Single Family Dwelling

Type of Work: Alteration

Work Description: Gas Insert & Gas Line

971-21-000129-MECH Issued: 2/26/21 Fees: \$100.80 Valuation: \$2,500.00

Address: 1594 WALTON WAY, WOODBURN, OR 97071

Parcel: 051W07BB19300

Owner: HALBRITTER ELIZABETH A

Licensed Prof:

Category of Construction: Single Family Dwelling

Type of Work: Alteration

Work Description: Install gas furnace

Residential Mechanical 26 permits issued \$2,800.00 \$189,447.16

Permits Issued:

Residential Structural

971-21-000062-STR	Issued: 2/26/21	Fees: \$1,517.52	Valuation: \$53,882.40
Address: 1140 KOFFLER AVE, WOODBURN, OR 97071		Parcel: 051W08CC02700	
Owner: GIRON, ROSALINDA G			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: 440 sq. ft. addition			
971-21-000093-STR	Issued: 2/19/21	Fees: \$336.00	Valuation: \$2,841.93
Address: 1439 ASTOR WAY, WOODBURN, OR 97071		Parcel: 051W07BB16300	
Owner: BUSCHERT DARWIN J BUSCHERT SUZANNE F			
Licensed Prof:			
Category of Construction: Other	Type of Work: Alteration		
Work Description: INSTALLATION OF UTILITY INTERACTIVE PHOTOVOLTAIC SOLAR SYSTEM 3.15 kW DC PHOTOVOLTAIC SOLAR ARRAY ROOF TYPE: Comp Shingle MODULES: (10) JinKO Solar Eagle JKM 315M-60HL INVERTER(S): Enphase IQ7-60-2-US,---- RACKING: Unirac SFM Infinity			
971-21-000106-STR	Issued: 2/19/21	Fees: \$336.00	Valuation: \$7,344.00
Address: 1393 AUTUMN BLVD, WOODBURN, OR 97071		Parcel: 051W18CC10700	
Owner: MORRIS WILLIAM MORRIS KAREN			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Other		
Work Description: Installation of solar panels on existing residential roof. 6.12kW			

Residential Structural	3 permits issued	\$2,189.52	\$64,068.33
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58 permits issued		\$388,201.70	\$6,430,335.74
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**COUNCIL MEETING MINUTES
MARCH 8, 2021**

DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, MARCH 8, 2021

CONVENED The meeting convened at 7:00 p.m. with Mayor Swenson presiding.

ROLL CALL

Mayor Swenson	Present -via video conferencing
Councilor Carney	Present -via video conferencing
Councilor Cornwell	Present -via video conferencing
Councilor Schaub	Present -via video conferencing
Councilor Swanson	Present- via video conferencing
Councilor Puente	Present -via video conferencing
Councilor Cabrales	Present -via video conferencing

Staff Present (via video conferencing): City Administrator Derickson, City Attorney Shields, Economic Development Director Johnk, Deputy Police Chief Pilcher, Community Development Director Kerr, Public Works Project and Engineering Director Liljequist, Finance Director Turley, Human Resources Director Gregg, Senior Planner Cortez, Parks and Recreation Manager Cuomo, Associate Planner Handel, City Recorder Pierson

PRESENTATIONS

Recognition of Chief Ferraris – Chief Ferraris was recognized for his service to the city of Woodburn and congratulated on his retirement.

COVID-19 Update - Parks and Recreation Manager Cuomo provided an update on the COVID-19 response in Woodburn.

Comcast Franchise– Assistant City Attorney Granum, Tim Goodman with Comcast, and Reba Crocker with ROW Consultants provided information on the proposed Cable Television Franchise with Comcast

BUSINESS FROM THE PUBLIC

Hailey Hulsey with Home Youth Resource Center in Salem reached out to the City Council to let them know they have resources to help houseless youth in Marion County.

CONSENT AGENDA

- A. Woodburn City Council minutes of February 8, 2021,
- B. Woodburn City Council Meeting minutes of February 22, 2021,
- C. Building Activity for February 2021,
- D. Crime Statistic for January 2021.

Carney/Cabrales...adopt the Consent Agenda. The motion passed unanimously.

PUBLIC HEARINGS

- A. **Continuance of Council Hearing of Annexation of Approximately 8.62 Acres of Territory Known as the Ivanov Property at 2145 Molalla Rd NE (ANX 2019-01) and Approval of Related Land Use Applications for Development into the Woodburn Eastside Apartments**

COUNCIL MEETING MINUTES MARCH 8, 2021

Continuance of the Public Hearing to consider input on an annexation of approximately 8.62 acres of territory known as the Ivanov Property at 2145 Molalla Rd NE (ANX 2019-01) and approval of related land use applications for development into the Woodburn Eastside Apartments. Mayor Swenson declared the hearing open at 8:24 p.m. for the purpose of hearing public input on an annexation of approximately 8.62 acres of territory known as the Ivanov Property at 2145 Molalla Rd NE (ANX 2019-01) and approval of related land use applications for development into the Woodburn Eastside Apartments. Mayor Swenson asked if there were any declarations from the Council. City Recorder Pierson read the public hearing statement. Community Development Director Kerr provided a staff report. Mark Grenz provided testimony on the application. Tegan Enloe, with Enloe Consulting provided information on the questions that City Council raised in regards to traffic in that area. No members of the public wished to speak in either support or opposition of the annexation of approximately 8.62 acres of territory known as the Ivanov Property at 2145 Molalla Rd NE (ANX 2019-01) and approval of related land use applications for development into the Woodburn Eastside Apartments. There was discussion by the Council to have a condition that outlines the requirement for the turn for the new driveway off the Safeway property to be agreed to. Mayor Swenson closed the hearing at 9:05 p.m. **Carney/Schaub...** tentatively approve the annexation associated with the land use application and the condition that was set forth during our discussions tonight. On roll call vote the motion passed unanimously.

B. Continuance of Public Hearing for ANX 2020-04 & ZC 2020-03 “SWIR Annexation - Weisz Properties”

A Public Hearing to consider input on ANX 2020-04 & ZC 2020-03 “SWIR Annexation - Weisz Properties”. Mayor Swenson declared the hearing open at 9:15 p.m. for the purpose of hearing public input on ANX 2020-04 & ZC 2020-03 “SWIR Annexation - Weisz Properties”. Mayor Swenson asked if there were any declarations from the Council. City Recorder Pierson read the public hearing statement. Associate Planner Handel provided a staff report. Lee Leighton, with Mackenzie, provided testimony on behalf of the applicant. No members of the public wished to speak in either support or opposition of the ANX 2020-04 & ZC 2020-03 “SWIR Annexation - Weisz Properties”. Mayor Swenson closed the hearing at 9:30 p.m. **Carney/Schaub...** tentatively approve the annexation and associated annexation of the Weisz property. On roll call vote the motion passed unanimously.

C. 2019 Community Development Block Grant (CDBG) from Business Oregon for the Woodburn Family Resource Center Closeout

A Public Hearing to consider input on a 2019 Community Development Block Grant (CDBG) from Business Oregon for the Woodburn Family Resource Center Closeout. Mayor Swenson declared the hearing open at 9:32 p.m. for the purpose of hearing public input on a 2019 Community Development Block Grant (CDBG) from Business Oregon for the Woodburn Family Resource Center Closeout. Economic Development Director Johnk provided a staff report. No members of the public wished to speak in either support or opposition of 2019 Community Development Block Grant (CDBG) from Business Oregon for the Woodburn Family Resource Center Closeout. Mayor Swenson closed the hearing at 9:40 p.m. **Carney/Schaub...** approve the closeout of the Woodburn Family Resource Center Project. The motion passed unanimously.

D. 2020 Community Development Block Grant COVID-19 (CDBG-CV1) from Business Oregon for Food Bank Assistance & Broadband/Internet Distance Learning Assistance due to Impacts of the COVID-19 Pandemic

A Public Hearing to consider input on a 2020 Community Development Block Grant COVID-19 (CDBG-CV1) from Business Oregon for Food Bank Assistance & Broadband/Internet

COUNCIL MEETING MINUTES

MARCH 8, 2021

Distance Learning Assistance due to Impacts of the COVID-19 Pandemic. Mayor Swenson declared the hearing open at 9:43 p.m. for the purpose of hearing public input on a 2020 Community Development Block Grant COVID-19 (CDBG-CV1) from Business Oregon for Food Bank Assistance & Broadband/Internet Distance Learning Assistance due to Impacts of the COVID-19 Pandemic. Economic Development Director Johnk provided a staff report. Councilor's Puente and Cabrales stated that they may have a conflict of interest. No members of the public wished to speak in either support or opposition of 2020 Community Development Block Grant COVID-19 (CDBG-CV1) from Business Oregon for Food Bank Assistance & Broadband/Internet Distance Learning Assistance due to Impacts of the COVID-19 Pandemic. Mayor Swenson closed the hearing at 10:04 p.m. **Carney/Swanson...** approve the 2020 Community Development Block Grant COVID-19 (CDBG-CV1) from Business Oregon for Food Bank Assistance & Broadband/Internet Distance Learning Assistance due to Impacts of the COVID-19 Pandemic. The motion passed unanimously.

CITY COUNCIL FY 2021-23 GOALS

City Administrator Derickson provided a staff report. **Carney/Cornwell...** adopt the goals as written with the stipulation that the additions that have been articulated by Scott and others that may emerge are discussed at our next meeting with the intention to create final wording. The motion passed unanimously.

CITY ADMINISTRATOR'S REPORT

The City Administrator spoke on the cost impacts of the recent ice storm which add up to around 1.1 million dollars. Councilors may see a supplemental budget in the future to move some money out of contingency reserves to help cover those costs.

MAYOR AND COUNCIL REPORTS

The Council had nothing to report.

ADJOURNMENT

Carney/Swanson... meeting be adjourned. The motion passed unanimously. The meeting adjourned at 10:37p.m.

APPROVED _____
ERIC SWENSON, MAYOR

ATTEST _____
Heather Pierson, City Recorder
City of Woodburn, Oregon



March 22, 2021

TO: Honorable Mayor and Council through City Administrator

FROM: Anthony Turley, Finance Director

SUBJECT: **FY 2020-2021 Supplemental Budget Request for Acceptance of Grant Awards for Community Development Block Grant (CDBG) and Cares Act Emergency Rental Assistance Grant Funds and the Appropriation Authority for Expending the Grant Revenue for their Approved Purposes.**

RECOMMENDATION:

Adopt the Resolution authorizing \$450,000 additional grant revenue and appropriation authority to Operating Expenses in the General Fund.

BACKGROUND:

Every year, after Council budget adoption, circumstances arise that were either unforeseen, unquantifiable, or discovered as errors. Oregon Budget Law, ORS 294.471(1) provides for changes to adopted budgets through a transfer resolution or supplemental budget process that notices the proposed changes. Transfers in excess of 15 percent of any fund's total expenditures, or supplemental budget changes in excess of 10 percent of any fund's total expenditures, require a public hearing to accept public testimony on the item under consideration.

Like the adopted budget, supplemental budget requests must be balanced; in other words, net revenue and net expense for the request must be equal. This can be accomplished by budgeting additional revenue or by reducing another expenditure category (such as contingencies).

DISCUSSION:

The City of Woodburn has received a CDBG/Cares Act grant through the State of Oregon for \$450,000. This additional revenue was not anticipated when the budget was adopted. This grant is intended to assist the community with rental assistance due to the impact of the COVID-19 pandemic.

Agenda Item Review: City Administrator ___x___ City Attorney ___x___ Finance ___x___

FINANCIAL IMPACT:

If the resolution is approved, the following changes will be made:

SUMMARY OF PROPOSED BUDGET CHANGES								
AMOUNTS SHOWN ARE REVISED TOTALS IN THOSE FUNDS BEING MODIFIED								
General Fund 001								
Resource	Original	Change	Revised	Requirement	Original	Change	Revised	
1 Revenue	18,969,220	450,000	19,419,220	Operating Expenses	18,969,220	450,000	19,419,220	
2								
Revised Total Fund Resources			19,419,220	Revised Total Fund Requirements			19,419,220	
<i>Comments: Federal Grant allocated to rental assistance & Business Oregon Grant Funds.</i>								



Agenda Item

March 22, 2021

TO: Honorable Mayor and City Council

FROM: Jim Row, Assistant City Administrator
McKenzie Granum, Assistant City Attorney

SUBJECT: **Comcast Cable Television Franchise**

RECOMMENDATION:

Enact the Ordinance granting a franchise to Comcast of Oregon I, Inc. ("Comcast"), allowing them to construct, operate, maintain, and provide wireline cable television services within the City of Woodburn.

BACKGROUND:

In spring 2020, Comcast approached the City to discuss expanding its services to the Woodburn community. At that time, the City did not have a cable television franchise with Comcast, but expressed mutual interest in engaging in a franchise negotiation process.

At the initial stages of discussions with Comcast, the City had also decided to contract with consultant Reba Crocker of ROW Consultants LLC to assist with updating the City's right-of-way ("ROW") management program. Given that timing and the expertise that Ms. Crocker could bring to the negotiations of a new cable franchise of this complexity, the City selected Ms. Crocker to negotiate on behalf of the City with representatives from Comcast.

Through the negotiation process, the City needed to navigate a number of concerns, such as how the franchise would be affected by the closure of operations at WCAT (the Woodburn Community Access Television Channel), or the impending expiration of the current franchise with cable provider WAVE in 2023; however, the thoughtfulness and attention to detail by the City's consultant and representatives from Comcast is what resulted in the parties reaching a deal in the form of the agreement being presented.

Agenda Item Review: City Administrator ___x___ City Attorney ___x___ Finance ___x___

Pending approval, Comcast anticipates initiating the construction of their facilities following the April 1, 2021 franchise effective date and expects their services to be available to the public approximately 6-18 months later.

DISCUSSION:

The Franchise Agreement will grant Comcast the right to use the public ROW to provide wireline cable television services. The initial agreement will be for a term of five (5) years and is not exclusive, meaning the City reserves the right to grant a similar franchise to another cable television provider pursuant to the requirements of state and federal law.

Some of the specific details and highlights of the new franchise include:

- Term: The franchise will be valid for a five (5)-year term following the effective date (April 1, 2021), with an option for the parties to mutually agree on a renewal of the franchise after affording the public adequate notice and opportunity to comment.
- Franchise Fee: 5% of "gross revenues" as defined in the agreement (the maximum percentage allowed by federal law and the same percentage currently imposed under other competitive franchises). Compensation is due from Comcast to the City on a quarterly basis.
- Construction-Related Provisions: Comcast will be responsible for obtaining all necessary permits and providing the City with a construction schedule for all work within the ROW. Additionally, Comcast agrees to work with other providers/franchisees so as to reduce as far as possible the number of street cuts and disruptions to the public. Comcast is also fully responsible for the repair and restoration of streets, public ways, and grounds that may be disturbed or otherwise damaged through build-out and construction.
- Future Annexations. As areas are annexed into the City, Comcast will provide cable television services to all residences within the newly annexed area, with services being provided contemporaneously with other utility services or no more than sixty (60) days from first occupancy.
- Undergrounding: Comcast must install its cable system underground where existing wireline cable service utilities are placed underground. Additionally, Comcast agrees that it will, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility

facility within the ROW, including relocation of aerial facilities underground where all wireline cable providers are being asked to relocate underground.

- Comcast Identification: All Comcast personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office will wear a clearly visible identification card bearing their name and photograph. Every service vehicle of Comcast and its contractors or subcontractors will be clearly identified as such to the public. Specifically, Comcast vehicles will have Grantee's logo plainly visible. The vehicles of those contractors and subcontractors working for Comcast will have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Comcast.
- Customer Service: Comcast will maintain a store within 20 miles of the city limits, staffed 40-hours per week (at least 8 on weekends or evenings), for purposes of accepting payments (including cash payments), exchanging or accepting returned equipment, and responding to service inquiries. Comcast will also maintain a toll-free number to receive subscriber calls/inquiries, including a 24/7 line to receive reports of service interruptions.
- Rates & Service Changes: All of Comcast's rates and charges will be published (in the form of a publicly available rate card) and will be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Comcast agrees that it will provide reasonable notice to Subscribers and the City of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including Channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes.
- PEG Access Channels: While the City is no longer operating a PEG Channel (public, educational, or governmental access channel), if the City decided to reactivate a PEG channel, then under certain advance notification/triggering procedures, Comcast would make that channel(s) available to all subscribers and additionally pay PEG support fees follows: (i) a one-time fee in the amount of \$20,000; (ii) quarterly fee of \$2,250; and (iii) fifteen cents (\$0.15) per subscriber fee per month.

- Insurance & Bonding: The legal protections extended by Comcast through a performance bond, liability insurance, and indemnification provisions have been reviewed by the city attorney's office and been found to adequately protect the City's interests arising from the operations of Comcast.

FINANCIAL IMPACT:

The amount of franchise fees that would be generated from Comcast is unknown at this time and would not be collected until the quarter following the first date service would be available to the public.

Compensation for use of the City's rights-of-way continues to be important to recover costs incurred by the City. The addition of Comcast bringing its cable service to Woodburn is expected to help stabilize that fund.

COUNCIL BILL NO. 3144

ORDINANCE NO. 2585

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO COMCAST OF OREGON I, INC. AND DECLARING AN EMERGENCY

WHEREAS, the City of Woodburn ("City") has a statutory and Constitutional authority to manage its rights-of-way and to receive compensation for private use of the rights-of-way consistent with applicable state and federal law;

WHEREAS, the City received a request from Comcast of Oregon I, Inc., a Delaware corporation, to place facilities within the rights-of-way to provide wireline cable television services within the corporate boundaries of the City of Woodburn; and

WHEREAS, the City and Comcast of Oregon I, Inc. have been negotiating in good faith toward an agreement and the parties have agreed to a non-exclusive, 5-year franchise agreement; NOW, THEREFORE,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Grant of Franchise. The City hereby grants to Comcast of Oregon I, Inc., a non-exclusive franchise on the terms and conditions set forth in the attached Exhibit A, incorporated herein by reference, for a period of five years from the effective date of this ordinance, to provide wireline cable television service within the City of Woodburn, and authorizes the City Administrator to sign said agreement.

Section 4. Emergency Clause. This ordinance being necessary for the immediate preservation of the public peace, health, and safety since it is in both parties interest to have the franchise effective on April 1, 2021, an emergency is declared to exist and this ordinance shall take effect as of April 1, 2021.

Approved as to form: _____
City Attorney Date

Approved: _____
Eric Swenson, Mayor

Passed by the Council _____

Submitted to the Mayor

Approved by the Mayor

Filed in the Office of the Recorder

ATTEST:

Heather Pierson, City Recorder
City of Woodburn, Oregon

CABLE TELEVISION FRANCHISE AGREEMENT
Between
THE CITY OF WOODBURN
And
COMCAST OF OREGON I, INC.

TABLE OF CONTENTS

1.	PURPOSE AND INTENT	1
2.	DEFINITIONS	1
3.	GRANT OF FRANCHISE	7
3.1	Grant	7
3.2	Use of Public Streets and Rights of Way	8
3.3	Duration and Effective Date of Franchise/Franchise Review	8
3.4	Franchise Not Exclusive	9
3.5	Grant of Other Franchises	9
3.6	Franchise Transfer	10
3.7	Relation to Other Provisions of Law	11
3.8	Franchise Acceptance	11
3.9	Effect of Acceptance	11
4.	CONSTRUCTION AND SERVICE REQUIREMENTS	11
4.1	General	11
4.2	Construction	12
4.3	Right of Inspection of Construction	12
4.4	Provision of Service	12
4.5	Erection of Poles	13
4.6	Trimming of Trees or other Vegetation	13
4.7	Repair and Restoration of Streets, Public Ways and Grounds	14
4.8	Construction Codes	14
4.9	Reservations of Street Rights	14
4.10	Street Vacation and Abandonment	14
4.11	Movement and Location of Facilities	15
4.12	Undergrounding	15
4.13	Maps	16
4.14	Emergency	16
5.	SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS	16
5.1	Equal and Uniform Service	16
5.2	System Configuration	16
5.3	Channel Capacity	17
5.4	Emergency Alert Capability	17
5.5	Standby Power	17
5.6	Cable System	17
5.7	Parental Control Lock	17
5.8	Technical Standards	18
5.9	Performance Testing	18
5.10	FCC Compliance	18
6.	SERVICES AND PROGRAMMING	18
6.1	Programming Categories	18
6.2	Changes in Video Programming Services	19
6.3	Leased Channel Service	19
6.4	Obscenity	19
6.5	Public, Educational and Government Programming	19
6.6	Complimentary Cable Service to Public Buildings/Schools	22
7.	FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS	23
7.1	Intent	23

7.2	Areas of Regulation and Administration	23
7.3	Administration and Regulation	23
7.4	Remedies for Franchise Violations/Revocation	24
7.5	Remedies Not Exclusive	25
7.6	Customer Service Standards	26
7.7	Customer Service and Telephone Responsiveness	26
8.	GENERAL FINANCIAL AND INSURANCE PROVISIONS	31
8.1	Compensation	31
8.2	Faithful Performance Bond	32
8.3	Damages and Defense	32
8.4	Liability Insurance and Indemnification	33
9.	RIGHTS RESERVED TO GRANTOR	34
9.1	Grantor Acquisition of the Cable System	34
9.2	Right to Perform Franchise Audit or Review	34
9.3	Right of Inspection of Construction	35
9.4	Intervention	35
9.5	Right to Require Removal of Property	35
9.6	Inspection of Facilities	35
10.	RIGHTS OF INDIVIDUALS PROTECTED	35
10.1	Discriminatory Practices Prohibited	35
10.2	Unauthorized Monitoring or Cable Tapping Prohibited	36
10.3	Privacy and Other Rights	36
10.4	Permission of Property Owner Required	36
10.5	Sale of Subscriber Lists and Personalized Data Prohibited	37
11.	TERMINATION AND EXPIRATION	37
11.1	Grantor's Rights in Lieu of Revocation	37
11.2	Expiration	37
11.3	Continuity of Service Mandatory	37
12.	OPERATION AND MAINTENANCE	37
12.1	Open Books and Records	37
12.2	Communication with Regulatory Agencies	38
12.3	Reports	38
12.4	Safety	39
13.	MISCELLANEOUS PROVISIONS	39
13.1	Compliance with Laws	39
13.2	Severability and Preemption	39
13.3	Captions	40
13.4	No Recourse Against the Grantor	40
13.5	Nonenforcement by Grantor	40
13.6	Force Majeure	40
13.7	Entire Agreement	40
13.8	Consent	40
13.9	Notices and Time Limit for Grantee Communications	40
13.10	Consistency of Franchise with Cable Act	41
13.11	Notice	41
13.12	Public Disclosure	41
13.13	Time is of the Essence	41
13.14	Reservation of Rights	41

1. PURPOSE AND INTENT

- A. The City of Woodburn, Oregon (hereafter Grantor) is authorized to and by this Franchise Agreement, does grant to Comcast of Oregon I, Inc. (hereafter Grantee) a non-exclusive five (5) year franchise, revocable as provided herein, to construct, operate and maintain a Cable System in the City for the purpose of providing wireline cable services within the City.
- B. The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.
- C. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or both parties, then the parties will modify this Franchise to ensure that the Franchise remains consistent with Applicable Law.

2. DEFINITIONS

For the purposes of this Franchise Agreement and all attachments included hereto, the following words, terms, phrases, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. Words used in this Franchise which are not defined hereunder but defined in the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (“Cable Act”) will have the meaning specified in the Cable Act definition.

- A. “Access” or “Community Access” or “Public, Educational and Government (PEG) Access” means the availability for use of the Cable System by various agencies, institutions, organizations, groups and individuals in the community, including the Grantor and its designees, of designated Channels on the Cable System to acquire, create, and distribute non-commercial programming.
- B. “Access Channel” or “Public, Educational or Government Access (PEG) Channel” means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a Programmer, without charge by the Grantee, on a non-discriminatory basis.
- C. “Public Access Channel” or “Public Access” means any Access channel or portion of an Access channel where any member of the general public or any non-commercial organization may be an Access Programmer on a non-discriminatory basis, subject to operating rules formulated by the Grantor or its designee. Such rules will not be designed to control the content of public access programming.
- D. “Educational Access Channel” means any Access channel or portion of an Access channel available for educational programming by individuals or institutions, where educational institutions are the primary or designated Programmers or user having editorial control over their Programming.
- E. “Government Access Channel” means any Access channel or portion of an Access channel available for programming by government agencies, where governmental institution are the

primary or designated Programmers or users having editorial control over their Programming.

- F. “PEG Access” means Public Access Channels, Educational Access Channels and Government Access Channels collectively.
- G. “Access Center” means a facility or facilities where Public, Educational, or Government use Signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- H. “Access Channel” mean any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- I. “Affiliate” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- J. “Basic Cable Service” means any service of tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise and is made available to all Cable Services Subscribers.
- K. “Broadcast Signal” means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.
- L. “Cable Act” means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- M. “Cable Operator”, “Wireline Cable Service Provider” means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operations of such a Cable System.
- N. “Cable Service” will have the meaning provided under Federal law and regulations.
- O. “Cable System” or “Cable Communications System” or “System” will have the meaning specified in the definition of “Cable System” in the Cable Act. In every case of its use in this Franchise, unless otherwise specified, the term will refer to the cable system constructed and/or operated by the Grantee in the City under this Franchise.
- P. “Calendar Year” means the period of time from January 1 to December 31.
- Q. “Capacity” means the maximum ability to carry Signals or other information within the specified format.
- R. “Capital Cost” means the expenditure of funds for PEG capital resources whose useful life can be expected to exceed a period of one (1) year or longer.
- S. “Channel” will have the meaning specified in the definition of “Channel” in Section 602 of the Cable Act (47 U.S.C. 522 (4)).

- T. “City” means the City of Woodburn a municipal corporation, or its duly appointed and/or authorized representative, and all the territory within its boundaries, as such may change from time to time.
- U. “Demarcation” means up to and including the device where the DAP Signal is converted into a format to be transmitted over a connection to the Grantee.
- V. “Designated Access Provider (“DAP”)” means the entity or entities designated by the Grantor to manage or co-manage PEG Access Channels and Access Centers. The Grantor may be a Designated Access Provider.
- W. “Downstream” means the transport of Signals from the Headend to Subscribers or to Interconnection points service by the Cable System.
- X. “Emergency” means a circumstance in which immediate work to repair damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- Y. “FCC” means the Federal Communications Commission.
- Z. “Fiscal Year” means the period from July 1 to June 30.
- AA. “Franchise” or “Franchise Agreement” means the authorization granted by this document for the construction or operation of a cable system for the sole purpose of delivering cable services.
- BB. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and will also include any additions thereto, by annexation or other legal means.
- CC. “Grantee” means Comcast of Oregon I, Inc., and its lawful successors, transferees, or assignees thereof.
- DD. “Grantor” means the City, a municipal corporation in the State of Oregon and/or its authorized representative or agents.
- EE. “Gross Revenues” means, and will be construed broadly to include all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee’s Cable System to provide Cable Service within the Franchise Area. Gross revenues include, by way of illustration and not limitation:
 - I. Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
 - II. Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service within the Franchise Area;
 - III. Fees paid to Grantee for channels designated for commercial/leased access use, which will be allocated on a pro rata basis using total Cable Service Subscribers;
 - IV. Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - V. Payments for pre-paid Cable Services and/or equipment;

- VI. Advertising Revenues as defined herein;
- VII. Fees including, but not limited to:
 - a. late fees, convenience fees, administrative fees and similar multiservice fees, which will be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
 - b. Franchise fees;
 - c. The FCC User Fee;
- VIII. Revenue from programing guides; and
- IX. Commissions from home shopping channels and other Cable Service revenue sharing arrangements which will be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise area.

“Gross Revenues” will not be net of: 1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, will not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, will be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, will not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" will include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. "Gross Revenues" will not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" will not include bad debt.

“Advertising Revenues” will mean amounts derived from sales of advertising that are made available to Grantee’s Cable System Subscribers and will be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees will include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., “revenue offsets” and “contra expenses” and “administrative expenses” or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Effectv or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

“Gross Revenues” will **not** include:

- I. Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which will be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
- II. Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise Fee, the FCC User Fee will not be regarded as such a tax or fee;
- III. Launch fees and marketing co-op fees;

- IV. Unaffiliated third-party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above;
- V. Refunds, rebates or discounts made to Subscribers;
- VI. Sales of capital assets or sales of surplus equipment; and,
- VII. Revenue from non - cable services and/or any service or product that has not been determined by federal law or regulation to be a Cable Service.

To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee will calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation will be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Cable Service represents 50% of the total rate card for services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than 50% of the price of the bundled service total.

The parties acknowledge that Grantee maintains its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Grantee further agrees that it will not utilize GAAP to unlawfully, or in contravention of this agreement, avoid payment of franchise fees. At all times, Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise required document at the time of submittal, identifying each revised Section or line item.

- FF. "Headend" means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for Interconnection of the Cable System with adjacent Cable Systems or other separate communications networks, and all other related equipment and facilities.
- GG. "Interconnect" or "Interconnection" means the linking of the Cable System or I-Net with another cable system, communications systems or I-Net, or the linking of locations connect to portions of the Cable System outside the Franchise Area and those portions of the Cable System inside the Franchise Area, including technical, engineering, physical, financial and other necessary components to accomplish, complete, and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the systems or locations. Such linking does not necessarily include the provision of end-user equipment for generating or receiving signals.
- HH. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- II. "Non-Cable Services" means the transmission(s) of Telecommunications or information including, but not limited to, voice, video or data, without regard to the transmission protocol employed,

whether or not the transmission facilities are owned by the provider itself, and includes all forms of telephone services and voice, video, data or information transport, but does not include (1) Cable Service; (2) open video system service, as defined in 47 C.F.R. 76 (3) private communication systems services provided without using the public right-of-way; (4) over-the-air radio or television broadcasting to the public at-large from facilities licensed by the FCC (5) direct-to-home satellite service with the meaning of Section 602 of the Communications Act and (6) public communications systems.

- JJ. “Origination Point” means a location other than the Access Center, where PEG use programing is delivered to the Grantee for Upstream transmission.
- KK. “Person” means any corporation, partnership, proprietorship, individual, organization, association, or other entity authorized to do business in the State of Oregon, or any natural person.
- LL. “Programmer” means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to Subscribers, by means of the Cable System.
- MM. “Programming” means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.
- NN. “Record” means written or graphic materials, however produced, or reproduced, or any other tangible permanent record, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, magnetic and laser disk files, opinions or reports of consultants or expert, invoices, billings, statement of accounts, studies, appraisal, analyses, contracts, agreement, charts, graphs, and photographs, to the extent related to the enforcement or administration of this Agreement.
- OO. “Resident” means any natural person residing within the Franchise Area.
- PP. “Residential Service” means Cable Services delivered on the Cable System to residential subscribers.
- QQ. “Residential Subscriber” means any Resident who is lawfully receiving for any purpose or reason, any Cable Service provided by Grantee.
- RR. “Right of Way”, “Rights of Way”, “ROW”, or “Public Right of Way” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.
- SS. “School” means any public or accredited private primary or secondary schools and all similarly situated private and parochial educational institutions that have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.

- TT. “Section” means any section, subsection or provision of this Franchise Agreement.
- UU. “Signal” means any electrical or light impulses carried on the Cable System whether one-way or bi-directional.
- VV. “Streets and Public Ways” means the surface of and the space above and below any public street, road, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them, and except the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.
- WW. “Subscriber” means any person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of or in connection with the Cable System whether or not a fee is paid for such services.
- XX. “Tap” or “Tapping” means observing a two-way communication signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- YY. “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).
- ZZ. “Telecommunications Services” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).
- AAA. “Year” means a full twelve-month calendar year, unless designated otherwise, such as a “fiscal year.”

3. GRANT OF FRANCHISE

3.1 Grant

- A. Grantor hereby grants to the Grantee a non-exclusive and revocable franchise Effective on APRIL 1, 2021 revocable as provided herein, to construct, operate and maintain a Cable System for the provision of Cable service within the Franchise area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the facilities of the Cable Communications System as required and conditioned by the provisions of this Franchise Agreement.
- B. This Franchise is subject to the laws of the United States and the State of Oregon, to the general codes and police powers of the City enacted pursuant thereto affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. The Grantor will make a good faith effort to notify the Grantee of any City proceedings which would substantially affect the Grantee’s operations and will upon request supply the Grantee with copies of any City laws or regulations affecting Grantee’s operations. Notwithstanding

Grantor’s general exercise of police power described in Section 3.7 below, in cases of conflict between this Agreement and any ordinance or resolution that directly affects or changes the material terms outlined under section 3.5(B) of Grantee under this Agreement, this Franchise Agreement will govern. Nothing herein will be interpreted to prevent Grantor or Grantee from challenging the lawfulness of enforceability of any provision of applicable law.

- C. Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement and any Federal, State or City law, rule, or regulation.
- D. No rights will pass from Grantor to Grantee by implication. Without limiting the forgoing, by way of example and not limitation, the Franchise will not include or be a substitute for:
 - I. Any other permit or authorizations required for the privilege of transaction and carrying on a business within the City that may be required under generally applicable ordinances and laws of the Grantor;
 - II. Any permit, agreement of authorization required under generally applicable ordinances and laws of the Grantor in connection with operations on or in the Right of Way or property, including by way example and not limitation, street cut permits; or
 - III. Any permits or agreement for occupying any other property of the Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreement for placing devices on or in poles or wires, conduits, other structures or railroad easements, whether owned by the Grantor or a private entity. This provision should not be interpreted to restrict Grantee’s general franchise rights under 47 U.S.C. Section 541(a).
 - IV. Grantor agrees to use best efforts in its working relationship with Grantee in the permitting processes associated with Grantee’s permit requests.

3.2 Use of Public Streets and Rights of Way

For the purpose of constructing, operating and maintaining a Cable System for the provision of cable services in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Cable System. Prior to construction or alteration within City Streets and Public Ways, the Grantee will in each case request all required permits, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this Section will relieve the Grantee of the obligations of Section 4.6 regarding the trimming of trees and other vegetation.

3.3 Duration and Effective Date of Franchise/Franchise Review

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations, and restrictions pertaining thereto will be Five (5) years from the Effective Date of this Agreement, at which time the Franchise will expire and be of no force and effect. The effective date of the Franchise is specified in 3.1.A, (“Effective Date”) unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise will be null and void.

A. Renewal

- I. The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement will be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein will be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- II. In addition to the procedures set forth in the Cable Act, the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

3.4 Franchise Not Exclusive

The franchise granted herein is not exclusive. This Franchise will not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets and Public Ways by franchise, permit, or otherwise subject to the provisions of Section 3.5 herein.

3.5 Grant of Other Franchises

- A. The Grantor reserves the right to grant additional Franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the Public Rights of Way. Grantor intends to treat wireline cable service competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services and Grantee believes the Grantor has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this Section 3.5 will apply.
- B. As part of this Agreement, the Grantor and Grantee have mutually agreed that the following material Franchise terms may be used to compare Grantee's Franchise to a wireline cable service provider competitor: a 5% (five percent) Franchise fee, PEG funding, PEG Access Channels, and customer service obligations (hereinafter "Material Obligations"). Grantor and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline cable service provider competitor and as such can reasonably be expected to be applied fairly across all wireline cable service competitors.
- C. Within one (1) year of the adoption of a wireline cable service competitor's Franchise or similar authorization, Grantee must notify the Grantor in writing of the Material Obligations in this Agreement that exceed the Material Obligations of the wireline cable service competitor's Franchise or similar authorization. The Grantor will have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline cable service competitor, or dispute that the Material Obligations are different. In the event the Grantor disputes the Material Obligations are different, Grantee may bring an action in a competent court of law for a

determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the Grantor that it elects to immediately commence the renewal process under 47 USC§ 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.

- D. Nothing in this Section 3.5 is intended to alter the rights or obligations of either party under applicable federal or state law, and it will only apply to the extent permitted under applicable law and FCC orders. In no event will the Grantor be required to refund or to offset against future amounts due the value of benefits already received.
- E. This provision does not apply if the Grantor is ordered or required to issue a Franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Wireline Cable Service Provider actually commencing provision of service in the market to its first customer. Should the new Wireline Cable Service Provider fail to continuously provide service for a period of six (6) months, the Grantor has the right to implement this Agreement with its original terms upon ninety (90) days' notice to Grantee.
- F. This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from Franchise requirements pursuant to 47 U.S.C. Section 571; or to Systems that serve less than 5% (five percent) of the geographic area of the Grantor; or to Systems that only provide video services via the public Internet.

3.6 Franchise Transfer

Subject to Section 617 of the Cable Act (47 U.S.C. Section 537), no transfer of the Franchise or change in control of Grantee will occur without the prior written consent of Grantor, provided that such consent will not be unreasonably withheld.

No such consent will be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness, and no such consent will be required for a change in control or transfer of an ownership interest or other interest in Grantee to the parent of Grantee or transfer of an interest in the Franchise to the parent of Grantee, or any action which is the result of a merger of the parent of Grantee or any action which is the result of a merger of another Affiliate of Grantee. Grantee will provide written notice to Grantor of any transaction as described in this paragraph within sixty (60) days of such transaction.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor will proceed pursuant to Section 617 of the Cable Act and related rule makings of the FCC. Grantee will give Grantor written notice of the proposed transfer and will request consent of the transfer by the Grantor. Grantee will furnish all information required by law and/or reasonably requested by Grantor, at no cost to Grantor, with respect to the consideration of the transfer. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the legal, financial and technical qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. The Grantee will assist Grantor in any such inquiry.

In cases where the Grantor finds it inappropriate to give unconditional consent to the proposed transfer, the Grantor may condition its consent upon terms and conditions related to the legal, financial, and technical qualifications of the proposed transferee and to the resolution of outstanding and unresolved issues of Grantee's noncompliance with material terms and conditions of this Franchise. Grantee reserves the right to challenge Grantor's conditional consent as outside the scope of its authority under this

Franchise or federal law. Any transfer of ownership affected without the written consent of the Grantor will render this Franchise subject to revocation, provided that any such consent will not be unreasonably withheld. The Grantor will have one hundred twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within one hundred twenty (120) days, the request will be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, will within sixty (60) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described will be deemed void and of no effect unless Grantee will, within sixty (60) days after the same will have been made, file such certified copy as is required.

3.7 Relation to Other Provisions of Law

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise Term. The Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance will govern. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising out of contract or at law. The Franchise issued, and the fees paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

3.8 Franchise Acceptance

The Grantee, within forty-five (45) days after the tender by the Grantor to Grantee of the Franchise Agreement adopted by the Grantor, will file with the City a written acceptance executed by the Grantee, in the form attached hereto as Exhibit A. In the event Grantee fails to file the acceptance as required herein, then this Franchise will be null and void.

3.9 Effect of Acceptance

By accepting the Franchise, the Grantee;

- A. Acknowledges and accepts the Grantor's legal right to issue and enforce this agreement,
- B. Agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System,
- C. Accepts and agrees to comply with each and every provision of this agreement,
- D. Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and
- E. Agrees to not raise any claim to the contrary.

4. CONSTRUCTION AND SERVICE REQUIREMENTS

4.1 General

The Grantee will maintain on its cable system a minimum capacity of one hundred and twenty (120) activated channels, defined under the Cable Act as those channels engineered at the headend of the Cable

System for the provision of services generally available to residential subscribers of the cable services, regardless of whether such services actually are provided. In all its construction and service provision activities, Grantee will meet or exceed the construction, extension and service requirements set forth in this agreement.

4.2 Construction

In all its construction and service provision activities, Grantee will meet or exceed the construction, extension and service requirements set forth in this Franchise Agreement.

Prior to beginning any construction other than routine installations or repairs for individual subscribers, Grantee will provide Grantor with a construction schedule for work in the Streets. All construction will be performed in compliance with this Agreement and all applicable Grantor ordinances, codes, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. When obtaining a permit, Grantee will inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts. Grantee will work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of street cuts and disruption to the public.

- A. Open Trench. The Grantor agrees that in the event that Grantor is conducting a city project, Grantee requests Grantor provide means to discuss any open trench opportunities associated with Grantor's project to the extent consistent with applicable law and provide reasonable access to the open trench. Notwithstanding the foregoing, Grantee will not be required to utilize any open trench nor will failure of Grantor to contact Grantee under this section be considered a violation of this Agreement.

4.3 Right of Inspection of Construction

Grantor will have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it finds necessary to ensure compliance with construction or installation standards of this Franchise Agreement, other applicable City codes and ordinances, and other pertinent provisions of law. Grantee will fully cooperate in facilitating such inspections or tests and will be subject to any fees or charges applicable under ordinance or other laws or regulations.

4.4 Provision of Service

- A. It is the Grantor's general policy that all residences in the Grantee's franchise area should have equivalent availability of service from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee will not arbitrarily refuse to provide Cable Services to any Person within the Franchise Area subject to Section (B) below.
- B. Except as otherwise provided in Section 4.4 (F) Grantee will provide Cable Service to every residential dwelling unit within the Franchise Area where the average density is equal to or greater than ten (10) dwelling units per linear strand quarter cable mile as measured from Grantee's nearest cable line:
 - I. With no line extension charge; and
 - II. At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting from the nearest point on Grantee's Cable System to an outside wall for residential Subscribers with additional charges for non-standard installations computed on a time plus material basis to be calculated on that portion of the

- installation that exceeds the standard one hundred twenty-five (125) foot drop.
- III. In all new subdivisions or other areas where undergrounding is required, cable plant and drops will be placed underground; in other areas, new or replacement cable plant and drops will be placed underground whenever feasible.

Grantee will provide Cable Service to potential Subscribers that do not meet the density requirement set forth in Section 4.4(B) under the following circumstances, through agreement between the Grantee and the person requesting service for payment of line extension construction costs:

- I. Grantee will provide service at its normal, published installation charge for the initial one hundred twenty-five (125) feet of extension.
 - II. The subscriber will pay the actual cost of the extension for the distance over one hundred twenty-five (125) feet
- C. Notwithstanding Section 4.4(A), Grantee may establish different and non-discriminatory rates and charges and classes of services for Commercial Subscribers, as well as different and non-discriminatory monthly rates for classes of Commercial Subscribers. For the purposes of this Section 4.4.C, “Commercial Subscribers” means any other Subscriber other than Residential Subscribers in single family or multifamily dwellings.
- D. As areas are annexed into the City, Grantee will provide Cable Television services to all residences within the annexed area on the same terms as provided for in Section 4.4.C, unless otherwise authorized by the City.
- E. In new subdivisions, cable television service will be made available under the terms of 4.4.A through 4.4.C above either (i) contemporaneously with other utility services; or (ii) no more than sixty (60) days from first occupancy, whichever is first.
- F. Notwithstanding any other provision in this Franchise, Grantee will not be required to extend its Cable television service to any area of the City that already receives Cable television service from a provider that is not commonly owned to any degree with Grantee, unless the density meets or exceeds 60 dwelling units per linear cable quarter mile (1,320 feet) from Grantee’s nearest cable plant.

4.5 Erection of Poles

Grantee may not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor. The Grantee will make all reasonable efforts to lease pole space from the existing pole owners for all aerial constructions, under mutually acceptable terms and conditions, and will comply with all applicable ordinances, resolutions, rules and regulations of the Grantor, heretofore or hereafter adopted or established during the entire term of the Franchise.

4.6 Trimming of Trees or other Vegetation

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming will be done only in accordance with the codes and other rules and regulations of Grantor, heretofore or hereafter adopted or established during the entire term of the Franchise, and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. Nothing contained in this Franchise Agreement will be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

4.7 Repair and Restoration of Streets, Public Ways and Grounds

Whenever the Grantee disturbs the surface or otherwise damages any Street, alley, public roadway, hard surface pavement, other public ground, or ground, it will repair and restore the same to at least the prior condition or the legally required standard. In the case of a hard surface opening, Grantee will promptly refill the opening and restore the pavement to at least its original condition or the legally required standard. Grantor will notify Grantee if any opening made by Grantee requires further restoration and, after an eight-hour period for Grantee to affect the repairs, Grantor may refill and/or pave. All costs thereof, including but not limited to, inspection, supervision, and administration will be paid by Grantee. All excavations made by the Grantee will be properly safeguarded for the prevention of accidents. Any work required will be done in compliance with the rules, regulations and ordinances of the Grantor heretofore or hereafter adopted. Unless otherwise provided for in a written legal agreement with a private property owner, Grantee will repair and restore any private property it disturbs in the same manner required by the Franchise with respect to public property.

The requirement under this Section for the Grantor to notify the Grantee and to allow a minimum time period for repairs is effective except in the case of emergency, as determined under this Agreement.

4.8 Construction Codes

The Grantee will strictly adhere to all applicable building, zoning or other laws, codes, regulations and rules of Grantor in effect at the time of Grantee's work. The Grantee will arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question at the sole expense of the Grantee.

4.9 Reservations of Street Rights

Nothing in this Franchise Agreement will be construed to prevent any public work of the Grantor, including without limitation constructing sanitary or stormwater sewers, grading, paving, repairing and/or altering any Streets and Public Ways, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee will interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sanitary or stormwater sewer or water main, the improvement of a street or any other public improvement, then upon reasonable written notice from the Grantor, all such property including poles, wires, conduits or other appliances and facilities will be removed, replaced or relocated in a timely manner as will be directed by the Grantor, so that the same will not interfere with the said public work of the Grantor, and such removal, replacement or relocation will be at the sole expense of the Grantee. In the event of failure, neglect or refusal of the Grantee to relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure. Notwithstanding, if a public emergency exists, at the sole determination of the Grantor, Grantor may effect immediate repairs. All costs incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, will be paid by the Grantee.

4.10 Street Vacation and Abandonment

In the event any street, alley, public highway or portion thereof used by the Grantee will be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee may abandon its above ground Cable System facilities if Grantor grants Grantee the right to do so in writing. Grantee will have the right to abandon its underground Cable System facilities. If the above ground cable facilities removal is required by Grantor, at the time of removal thereof the Grantee will, at

no cost to Grantor, restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor and/or the new controlling jurisdiction. In the event of failure, neglect or refusal of the Grantee to remove its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. All costs incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, will be paid by the Grantee.

4.11 Movement and Location of Facilities

- A. Movement and location of Grantee's facilities will follow all applicable Grantor's regulations, heretofore or hereafter amended, unless otherwise provided within this Franchise.
- B. Unless otherwise agreed to in writing by the Grantor, Grantee will, at no cost to the Grantor, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the ROW, including relocation of aerial facilities underground where all wireline cable providers are being asked to relocate underground, when requested to do so in writing by the Grantor.

Grantor will bear no responsibility nor be liable for any costs, associated with Grantee's movement or alternate locations of Grantee's facilities.

4.12 Undergrounding

- A. Cable must be installed underground where:
 - I. All existing wireline cable service utilities are placed underground, other than high voltage electric facilities;
 - II. Statute, ordinance, policy or other regulation of Grantor lawfully requires utilities to be placed underground;
 - III. All overhead utility lines are placed underground, other than high voltage electric facilities (Grantee will bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise);
 - IV. Grantee is unable to get pole clearance;
 - V. Underground easements are obtained from developers of new residential areas; or
 - VI. Utilities are overhead but Residents prefer underground (undergrounding to be provided at Residents' cost).
- B. Cable may be installed above ground where:
 - I. Existing Wireline Cable Providers lines are above ground, excluding high voltage electric facilities; or
 - II. Grantee obtains written permission from Grantor
- C. Grantee will use conduit or its functional equivalent on 100% of undergrounding, except for drops from poles, pedestals or vaults to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit will be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee will use, in conjunction with utility companies or providers, common trenches for underground construction wherever available.

Nothing in this Section will be construed to prohibit Grantee from constructing, operating, or

maintaining aboveground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment provided that these are placed in a manner consistent with applicable laws, codes, rules and regulations, heretofore or hereafter adopted.

4.13 Maps

- A. **Strand Maps.** Grantee will maintain strand map drawings of the Cable System and make them available to the Grantor for inspection upon request. Strand drawings or their functional equivalent will be updated as changes occur in the Cable System. The Grantee will provide to the Grantor, upon request, at no cost to the Grantor, a copy of strand maps showing the location of the Grantee's facilities in the Streets and Public Ways within the Franchise Area.
- B. **GIS Maps.** Grantee will provide, upon request, at no cost the Grantor a GIS map, in a format acceptable to the Grantor of all its facilities located with the Grantor's rights-of-way or Grantor's property. Grantor will not request such map more than once per calendar year.
- C. Notwithstanding anything to the contrary set forth in this Section, the Grantee will not be required to disclose information beyond the GIS location of its facilities.

4.14 Emergency

In the event of emergency situation or circumstance that creates or is contributing to an imminent danger to health, safety, or property, as determined by Grantor in its sole discretion, the Grantor may remove or relocate Grantee's Cable System without prior notice. All costs incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, will be paid by the Grantee. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify, and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 4.14.

4.15 Emergency Repairs

In the event that emergency repairs are necessary, Grantee will immediately notify the Grantor of the need for such repairs. Grantee may initiate such emergency repairs and will apply for appropriate permits as soon as reasonably practicable but in no event not later than two business days after discovery of the emergency. Grantee will comply with all applicable Grantor regulations relating to such repairs, including the payment of permit or license fees.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

5.1 Equal and Uniform Service

Reasonable efforts will be made to provide equal and uniform access, Cable Service and rates to Subscribers and potential Subscribers within the Franchise Area.

5.2 System Configuration

The Cable System will have the bidirectional communications capacity for subscriber interaction if any, required for selection or use of Cable Service such as pay-per-view, VOD and other interactive cable services requiring addressability.

5.3 Channel Capacity

The Grantee will maintain on its Cable System a minimum capacity of two hundred (200) activated analog and/or digital Channels. The System will throughout the Franchise term carry reverse signals in the upstream direction. The system performance, capacity and services offered may be reviewed to assure the system keeps pace with changes in technology and is at least comparable to other systems in the area.

5.4 Emergency Alert Capability

- A. Grantee will provide emergency alert capability in full compliance with applicable FCC requirements. Grantee will establish procedures to override video and audio on all channels of the Cable System to provide emergency messages consistent with the FCC's directives.
- B. Grantee will allow Grantor to transmit an emergency alert message from locations designated by the Grantor to all subscribers.
- C. In times of emergency, the Grantor will permit only appropriately trained and authorized persons to operate the EAS equipment and, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, will indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from Grantor's use of the cable system or the EAS. Additionally, subject to limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 5.4.
- D. In non-emergency situations, only the Grantee is authorized to operate the EAS equipment. Upon request, the Grantor will be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, then Grantee will make any necessary adjustment to the EAS and the EAS will be retested.

5.5 Standby Power

Grantee will provide standby power generating capacity at the Cable System headend and all hubs and any fiber optic nodes capable of providing emergency operations for at least forty-eight (48) hours. Grantee will maintain standby power system supplies, rated at least at two (2) hours duration, throughout the trunk and distribution networks. In addition, Grantee will have in place throughout the Franchise term, a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. Upon request, Grantee will provide a copy of the plan to the Grantor.

5.6 Cable System

Grantee's Cable System will be able to deliver high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted.

5.7 Parental Control Lock

Grantee will provide Subscribers (by sale, lease or otherwise), upon request, with a manual or electronic parental control locking device or digital code that permits inhibiting the viewing of any channel, consistent with applicable regulations. Any charge for such device will be consistent with applicable rate regulations. Subscribers will be notified by Grantee of the availability of the locking device no less frequently than annually.

5.8 Technical Standards

Grantee will meet all the requirements of The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K.

5.9 Performance Testing

Grantee will perform all system tests required by the FCC, and all other tests reasonably necessary for the Grantor to easily, to determine compliance with technical standards required by this Franchise.

Upon request, Grantee will advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of this Agreement and applicable FCC technical standards. Written records of all system test results performed by or for the Grantee will be maintained and copies of written test will be made available to Grantor upon request, at no cost to Grantor. Tests may be witnessed by representatives of Grantor.

The Grantor may conduct independent tests of the system for which the Grantee will give its fullest cooperation. If one or more of the locations tested fail to meet the performance standards, the Grantee will be required to indicate what corrective measures have been taken, and the entire test will be repeated at the locations which failed, and at least five (5) additional randomly chosen locations. If results of a second test indicate failure of the system to meet the technical performance requirements of this Franchise, then the Grantor may apply such remedies as it deems appropriate, unless the circumstances of the failure are caused by conditions which are beyond the Grantee's control, as determined, acknowledged and verified by the Grantor.

5.10 FCC Compliance

It is the responsibility of the Grantee to document that the system and its operation are in compliance with FCC technical specifications and performance requirements. If the Grantor has received subscriber complaints regarding the performance of the Cable System, and the Grantor determines that the most efficient or only reasonable way to determine a question of System compliance with FCC technical specifications is through a specific testing of the system in addition to test required by the FCC; Grantee will, upon written notice by the Grantor, perform such testing at a reasonable time, and Grantee will give the Grantor an opportunity to witness the testing and provide the Grantor with documentation of the testing results. The FCC's technical standards will govern the protocols for all such testing.

In any case where the system testing reveals non-compliance with FCC standards, the Grantee will repair the system or make whatever modifications are required and necessary to bring the system performance into compliance with FCC standards within sixty (60) days.

6. SERVICES AND PROGRAMMING**6.1 Programming Categories**

To the extent Grantor has regulatory authority under federal law, the Grantee will provide video programming services in at least the following broad categories:

1. News & Information
2. Sports
3. General Entertainment
4. Arts, Culture, Performing Arts
5. Children / Family

6. Science
7. Travel Information
8. Weather Information
9. Governmental and Educational Programming
10. Movies
11. Religious Programming
12. Foreign language / Ethnic Programming

The identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable System, except for PEG Access programming, as further described herein.

6.2 Changes in Video Programming Services

Subject to the provision of the Cable Act, no category of services as referred to in Section 6.1 may be deleted, or so limited as to be effectively deleted by the Grantee without Grantor approval, which will not be unreasonably withheld. In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories described in Section 6.1, then the Grantee will be obligated to carry such programming.

6.3 Leased Channel Service

The Grantee will offer leased channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

6.4 Obscenity

The Grantee agrees that it will not transmit over the Cable System programming, which is obscene or otherwise unprotected by applicable law, provided, however, Grantee will in no way be responsible for programming over which it has no editorial control, including but not limited to, Public, Educational and Governmental Access programming.

6.5 Public, Educational and Government Programming

A. Channels

The Grantor and Grantee agree that the Grantor is not operating a PEG channel at the time this franchise is executed. It is further agreed that the obligations in Section 6.5 are contingent upon Grantor's decision to initiate a PEG channel with all wireline cable providers.

- I. Upon one hundred twenty (120) days advance written notice by Grantor, Grantee will provide to the Grantor, for independent administration by the Grantor or its Designated Access Provider (DAP) throughout the term of the Franchise, one (1) PEG Access Channel to be cablecast throughout the Franchise Area.
- II. In the event Grantor request the activation of the one (1) or more PEG Access Channel as set forth in this subsection, Grantor will identify three certain origination sites, from which Access Programming may originate and be transmitted therefrom to Grantee's headend. The costs to construct a connection for such transmission will be paid by the Grantor and Grantor may use PEG Supports funds for such purposes.

B. Triggers for Additional Access Channels

- I. After the initial Access Channel has been made available for PEG Access use, Grantee will, if directed by the Grantor, provide an additional activated Access Channel for PEG use to a maximum total of two Access Channels as required in this subsection. The Grantor will give

- Grantee at least 120 days prior written notice of the required additional Access Channels. Such written notice will include information verifying that the trigger criteria have been met.
- II. The one (1) additional Access Channel will be made available to the Grantor at such time that the existing Access Channels is in use for locally scheduled video programming (not to include character-generated programming, non-video transmissions, or repetitions of programs beyond three (3) repetitions an average of 80% of the time, seven days per week for any consecutive five-hour block during the hours from 10:00 a.m. to 10:00 p.m. for 10 consecutive weeks. Provided, however, that if the usage ratio of any additionally designated channel should at any time fall below 30% of the level of usage required above for the addition of a channel, then the use of that channel will revert back to the Grantee, upon 120 days' after Grantee's notice to Grantor.
 - III. Grantee will make PEG Access Channel(s) available to all Subscribers without any additional or extra costs to subscribers. Grantee may deliver such PEG Channels in a digital format, at Grantee's sole and absolute discretion. The Access Channels must be receivable by Subscribers without special expense, other than the expense required to receive Basic Service. Designated Access Providers have no obligation to provide a signal to Grantee in a digital format.
 - IV. The Grantee will provide all PEG Channels on the Basic Service tier throughout the life of the Franchise, consistent with the requirements of federal law. If there is no Basic Service tier, Grantee will provide the PEG Channels at no additional charge to any Person who subscribes to the lowest general level of cable video programming service and otherwise in accordance with federal and state law. If channels are selected through a menu system that is under the control of Grantee, the PEG Channels will be displayed in the same manner as other channels. Grantor or its Designated Access Provider will be responsible for the costs associated with specific program listings for the PEG Channels on Cable System program guides and menus.
 - V. Grantor may, at its sole cost and expense, deliver the PEG Channels to Grantee in video-on-demand (VOD) format. Grantor is responsible for all costs and expenses to encode and deliver such VOD programming. If Grantor delivers VOD programming to Grantee, Grantee will have the right, but not the obligation, to deliver the VOD programming to Subscribers receiving the PEG Channels.
 - VI. If Grantee modifies its Cable System in a manner that has the effect of requiring modifications to PEG facilities and equipment, in order to deliver PEG signals, Grantee will bear any cost that the Designated Access Providers must incur as a result, subject to applicable law. If, for example, Grantee requires high-definition signals, Grantee will bear the costs any Designated Access Providers incur to provide high-definition signals.
- C. Support for Access Costs
- I. At any time during the term of this Franchise once Grantee's cable system is operational, within one hundred twenty (120) days of written notice from the Grantor per Section 6.5.A.1, Grantee will pay a PEG Support fee in the amount of fifteen cents, (\$0.15) per subscriber per month, which funds will be used in accordance with applicable federal law. Nothing in this Section 6.5 will be viewed as a waiver of Grantor's rights to use the funds provided for any lawful purpose permitted under applicable federal law. Grantee will make such payments in conjunction with and at the same frequency as franchise fees.
 - a. PEG support payments to the Grantor will be accompanied by such information allowing the Grantor to easily verify compliance with this Section, including monthly subscriber numbers, and if needed or requested any such information Grantor reasonably deems required to verify compliance. Grantee will provide information to the Grantor within 30 (thirty) days without any cost to Grantor.
 - b. Both parties agree that Support for Access Costs is a material provision and subject to the terms specified in Section 3.5.B.

- II. Both parties agree that the PEG Access fee and the Additional Financial Support for PEG Access, if allowed by law, may be passed through to Subscribers. However, Grantee will not reduce or alter payments to the Grantor based on passed through amounts or amounts collected from subscribers. Payments will be calculated on the number of subscribers multiplied by the amount per subscriber, without reduction or off-set of any kind.
- III. If at any time after twelve (12) months of the PEG fee being paid to Grantor, the Grantor fails to operate the PEG Access Channel, Grantee may, after providing at least one hundred twenty (120) days written notice to Grantor, discontinue the PEG Access fee unless the Grantor operates the PEG Access channel within the one hundred twenty (120) day notice period.
- IV. Grantor agrees that the sections of any network infrastructure developed using PEG support funds that are used to transport PEG programming shall be readily identifiable, for their exclusive use for internal, institutional purposes only and shall not be made available to any other public or private entity.
- V. Should Grantee continue to provide Cable Services after the expiration of this Franchise and Grantor has activated a PEG channel, Grantee will continue to provide support of PEG Access as detailed in this Section 6.5.

D. Additional Financial Support for PEG Access

The commitments outlined in sections I-II below will be contingent upon Grantor's decision to initiate PEG Channel(s) with all wireline cable providers in the community and Grantee's cable system is operational. If that happens, then Grantor will provide Grantee with written notice of its intent to activate PEG channel(s), consistent with the terms of this Franchise Agreement. Once that occurs, Grantee will pay the below obligations no later than One Hundred Twenty (120) days from the time of notice by Grantor.

After the Grantor has established the operation of a PEG access channel, if the Grantor fails to provision six (6) months of continuous broadcasting of the PEG Access channel, Grantee may discontinue paying all Support in this Subsection D upon One hundred twenty (120) days written notice.

- I. Grantee will pay a one-time fee in the amount of Twenty Thousand Dollars (\$20,000.00) to contribute towards legally allowable PEG costs.
- II. Grantee will pay a quarterly fee in the amount of two thousand two hundred fifty dollars (\$2,250) per quarter. The payments will be remitted on the same schedule and subject to the same conditions as the franchise fees. Grantor's access channel(s) will air sponsorship announcements over the Access channel(s). Sponsorship announcements will not be produced or edited by Grantor. However, the announcements must be approved by Grantor and will conform to the FCC rules and regulations for noncommercial use.
- III. Grantee will pay its pro rata share of studio/office space for any PEG Access Provider(s) as long as such space is not located within building owned by Grantee. Such cost(s) will be equally shared among all wireline cable providers.

E. Access Support not Franchise Fees

So long as PEG support funds are used in a manner consistent with applicable federal law, the Grantee agrees that financial support for Access arising from or relating to the obligations set forth in Section 6.5 will in no way modify or otherwise affect the Grantee's obligations to pay Franchise fees to the Grantor. Unless allowed under federal law, the Grantee agrees that although the sum of Franchise fees and the payments set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, the additional PEG support commitments in this Section 6.5, will not be offset or otherwise credited in any way against Franchise fee payments under this Franchise Agreement.

F. Change in Technology

- I. In the event Grantee makes any changes in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access Programming, Grantee will, at Grantee's sole expense take necessary technical steps or provide necessary equipment at its facilities to ensure that the capabilities of Access Providers or Access Programmers are not diminished, or adversely affected by such change. Grantor or its Designated Access providers will be responsible for acquisition of necessary equipment at their respective facilities.
- II. In accordance with this Section 6.5, the Grantee, in the event of connecting PEG for Grantor, will be required to provide connections as described herein to its headend wherever the headend may be located or relocated. Without limiting the foregoing, in the event Grantee alters its Cable System (including by relocating its headend), Grantee will be responsible for replacing or restoring all connections at Grantee's sole cost consistent with applicable law so that all the functions and capacity remain available, operate reliably, and satisfy all applicable technical standards without additional cost to the Grantor or Designated Access

G. Technical Quality

- I. Grantee will maintain all upstream and downstream Access Channels and interconnections of Access Channels at the same or better level of technical quality and reliability provided for its Residential Network and required by this Franchise and all other applicable laws, rules, and regulations for Residential Subscriber Channels.
- II. Grantee will have no responsibility for the technical production quality of the Access Programming distributed on the Access Channels.
- III. The Grantee will not cause any Programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Grantor, its Designated Access provider or other duly appointed designee.

6.6 Complimentary Cable Service to Public Buildings/Schools

The Parties agree that at the effective date of this agreement Grantee will not have service available to residential, commercial, schools, or government agencies; due to the time needed for Grantee to build out its cable system. Consequently, the Parties agree that complimentary cable service accounts are not an immediate condition of the franchise agreement.

- A. The Parties agree that when Grantee's Cable system is operational, and if allowed by applicable law, Grantee will provide, at no cost to Grantor: One (1) outlet of basic and digital economy tier (or its functional equivalent) programming and any equipment necessary to receive such services, to each and every public use building, as designated by Grantor, including all Emergency Operation Centers, Libraries and Public Schools, passed by Grantee's system. Those portions of buildings that house prison and/or jail populations will be excluded from receiving complimentary services.
- B. Grantee and Grantor agree that should Grantee, as provided for by applicable law, be allowed to deduct the value of such services from franchise fees, or Grantor can pay for services:
 - I. Grantee will give Grantor one hundred twenty (120) days' notice of its intent to off-set franchise fees by the value of such services. Grantor may opt to keep services and accept the off-set, pay for the services, or cancel services.
 - II. Grantee and Grantor agree that services will be valued at the lowest rate available. For illustration and not limitation the lowest rate could be the bulk rate, municipal price, or other.

The Parties agree that the FCC's regulations regarding complimentary services are currently under review. Should this review, or other action result in a change to federal law, both parties agree to abide by federal law.

7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS

7.1 Intent

It is the intent of the Grantor to administer and enforce the provisions of this Franchise. Grantor may lawfully delegate all or a part of its administrative and regulatory authority under this Franchise to an agency designated by the Grantor.

7.2 Areas of Regulation and Administration

The Grantor (or its designee) has authority for regulation in the following areas:

- A. Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- B. Coordination of the operation of Public, Educational and Government Access Channels (PEG).
- C. Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as City departments, Schools and health care institutions.
- D. Formulating and recommending long-range cable communications policy of Grantor for the City.
- E. Disbursing and utilizing franchise revenues paid to the Grantor.
- F. Regulating rates, to the extent permitted by law.
- G. Customer service, to the extent permitted by law.
- H. Planning and facilitating development of public, education and government access programming, both within the City and through interconnection with adjacent systems.
- I. All other areas as provided by the Cable Act

Nothing in this Section 7.2 is intended or will be interpreted to expand Grantee's scope of authority authorized by state and federal law.

7.3 Administration and Regulation

- A. Authority. Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.
- B. Rates and Charges. All of Grantee's rates and charges related to or regarding Cable Service will be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

- C. **Rate Discrimination.** All of Grantee's rate and charges will be published (in the form of a publicly available rate card) and will be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee will apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status or physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.
- D. **Rate Discrimination Prohibited.** Grantee will apply non-discriminatory rates and charges to all Subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, or sexual preference, except as otherwise provided herein; provided that nothing in this Franchise will prevent the Grantee from establishing discounted rates and charges for low-income Subscribers or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- E. **Filing of Rates and Charges.** Throughout the term of this Agreement, Grantee will maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Agreement.
- F. The provisions of this Section 7.3 will be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Act), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor and Grantee in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights will be deemed superseded by those provisions of the Act.

7.4 Remedies for Franchise Violations/Revocation

A. Authority.

- I. If the Grantor believes that the Grantee has failed to preform any obligation under this Franchise or has failed to perform in a timely manner, and Grantor wishes to impose damages as afforded under applicable law or seek revocation under Section 7, Grantor will notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee will have a Cure Period following receipt of such notice to:
 - a. Response to the Grantor, contesting Grantor's assertion that a violation has occurred and request a hearing in accordance with Section 7.4.D;
 - b. Cure the violation; or
 - c. Notify the Grantor, in writing that Grantee cannot cure the violation within the Cure Period due to the nature of the violation and notify the Grantor, in writing what steps the Grantee will take to cure the violation including te Grantee's projected completion date for such cure. In such case, the Grantor will within 30 (thirty) days of receipt of such response either:
 - i. Accept Grantee's plan and schedule for curing the violation; or
 - ii. Set a hearing in accordance with 7.4.B.

The Cure Period, for purposes of Section 7, will be thirty (30) days, unless Grantor specifies a longer cure period, and except that in cases of emergency, or repeat violation within any 3 (three) month period, the Grantor may set a reasonable shorter Cure Period.

If a Grantee fails to demonstrate to the reasonable satisfaction of Grantor that no violation exists, or if

Grantee fails to correct the violation within the time prescribed, or if a Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee will then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council, pursuant to Section 7.4.E. of this Franchise. Said notice will indicate with reasonable specificity the violation alleged to have occurred.

- B. Plan for Cure. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the Cure Period and proposes a plan and schedule cure for which is not acceptable by the Grantor, Grantor may, within 30 (thirty) days of Grantee's receipt of such notice, set a hearing before the City Council. At the hearing, Grantor will review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by Grantor, who may waive all or part of the applicable damages for such extended cure period in accordance with the criteria set forth in 7.4.F.
- C. Imposition of Applicable Damages. In the event that the Grantee fails to cure the violation within the Cure Period, or within an extended cure period approved by the Grantor pursuant to 7.4.B, the Grantor may impose applicable damages or revoke this Franchise in accordance with the Section 7, but may do so only in accordance with the requirements of this Section, only after it holds a hearing before City Council to determine what damages, if any, or revocation, will be applied. Any such applicable damages will not begin to accrue until after the initial Cure Period has expired.
- D. Contest of Violation. In the event that the Grantee contests the Grantor's assertion that a violation has occurred and request a hearing in accordance with Section 7.4.A.1 above, the Grantor will set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found to have occurred, what remedies under this Section 7, will be applied.
- E. Opportunity to Be Heard. In the case of any hearing pursuant to this Section 7.4, Grantor will notify Grantee of the hearing is writing at least thirty (30) days prior to the hearing date. At the hearing, Grantee will be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject and may provide additional hearing procedures as Grantor deems appropriate. After the hearing is closed, Grantor will issue writing findings and a decision based on the evidence presented.
- F. Nature of Remedies. If after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:
 - I. Order Grantee to correct or remedy the violation with a reasonable time frames as Grantor will determine;
 - II. Revoke this Franchise, subject to Sections 7.4 and 11.1;
 - III. Pursue and other legal or equitable remedy available under this Franchise or other applicable law.

Nothing contained in this Section 7.4 will be deemed to prevent either party from appealing the decision to a higher court.

7.5 Remedies Not Exclusive

Except as provided in Section 7.4, Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section 7, and may without limitation pursue any rights, remedies or actions that it may have in law or

equity regardless of whether they are specifically mentioned in this Franchise.

7.6 Customer Service Standards

Grantee will comply with all applicable customer service standards established in the Cable Act or federal rules and regulations, including but not limited to FCC Rules and Regulations, Part 76, Subpart H and Subpart T, and Grantor has the authority to enforce such standards. Nothing in this Section will limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

7.7 Customer Service and Telephone Responsiveness

A. Customer Service and Telephone Availability

- I. Grantee will maintain a store within 20 (twenty) miles of the City limits. The office must be staffed 40 hours per week, and Grantee will be able to respond to subscribers and the public not less than 40 hours per week during normal business hours, plus at least 8 weekend or evening hours.
 - a. During the hours the office is open, Grantee's staff will be able to respond in at least, but not limited to
 - i. Accept payments (in cash, by check, or card),
 - ii. Exchange or accept returned equipment, and
 - iii. Respond to inquires.
- II. Grantee will maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and such representatives will be available to receive all other inquiries at least forty-five (45) hours per week including at least one night per week and/or some weekend hours. Grantee representatives will identify themselves by name when answering this number.
- III. Grantee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.
- IV. Under Normal Operating Conditions, as described in 7.7. II, calls received by the Grantee will be answered within thirty (30) seconds during Normal Business Hours. The Grantee will meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Franchise Area Subscribers, as measured on a cumulative Quarterly calendar basis. Measurement of this standard will include all calls received by the Grantee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after thirty (30) seconds of call waiting. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds.
- V. Under Normal Operating Conditions, callers to the Grantee will receive a busy signal no more than three (3%) percent of the time during any calendar Quarter.
- VI. Upon written request during a given calendar Quarter, forty-five (45) days following the end of each Quarter, the Grantee will report to Grantor, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:
 - a. Percentage of calls answered within thirty (30) seconds as set forth in 7.7.IV; and
 - b. Percentage of time Subscribers received a busy signal when calling the Grantee's service center as set forth in Section 7.7.V.
- VII. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee will notify Grantor of such a change not less than thirty (30) days in advance.

B. Installations and Service Appointments

- I. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding/bonding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Grantee-supplied equipment and Cable Service.
- II. The Standard Installation will be performed within seven (7) business days of Subscriber request. Grantee will meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the Subscriber outside of the seven (7) day period.
- III. Upon written request during a given calendar Quarter, Grantee will provide Grantor with a report noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber for that quarter. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.
- IV. At Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee will notify Grantor of such a change not less than thirty (30) days in advance.
- V. Grantee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Grantee's discretion, Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.
- VI. Grantee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Grantee representative go to the Subscriber's residence, (ii) by using a pre-paid mailer. If requested by a mobility-limited Subscriber, the Grantee will arrange for pickup and/or replacement of converters or other Grantee equipment at Subscriber's address, at no cost to Subscriber, or by a satisfactory equivalent.

C. Service Interruptions and Outages

Grantee will promptly notify Grantor of any Significant Outage of the Cable Service.

- I. Grantee will exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Service Area have been given at least 3 (three) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Grantee may perform modifications, repairs and upgrades to the System preferably between 12:01 a.m. and 6 a.m., so as to minimize service disruption to Customers.
- II. Grantee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.
- III. Under Normal Operating Conditions, Grantee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:
 - a. Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.
 - b. Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.

- IV. Under Normal Operating Conditions, Grantee will complete Service Calls within seventy-two (72) hours of the time Grantee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.
- V. Grantee will meet the standard in this Section for ninety percent (90%) of the Service Calls it completes, as measured on a Quarterly basis.
- VI. Upon written request during a given calendar Quarter, Grantee will provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period, not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.
- VII. Under Normal Operating Conditions, Grantee will provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture or sound for a period of four (4) consecutive hours or more. The credit will equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Grantee to verify the problem if requested by Grantee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.
- VIII. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Grantee will automatically issue a credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Grantee, provided such determination is non-discriminatory. Such credit will be reflected on Subscriber billing statements within the next available billing cycle following the outage.

D. Subscriber Complaints Referred by Grantor

Under Normal Operating Conditions, Grantee will begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Grantee will notify Grantor of those matters that require more than seventy-two (72) hours to resolve, but Grantee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Grantee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Grantee will inform Grantor in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section, “resolve” means that Grantee will perform those actions, which, in the normal course of business, are necessary to investigate the Subscriber’s complaint and advise the Subscriber of the results of that investigation.

E. Billing

- I. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills will clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Grantee will without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes, PEG fees, and/or other governmental-imposed fees. Grantee will maintain records of the date and place of mailing of bills.

Grantee will provide an example of subscribers' invoice, to Grantor with quarterly franchise fee payments. Confidential information may be redacted.

- II. Grantee will provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Grantee.
- III. Grantee will provide a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to Grantor.

F. Deposits, Refunds and Credits

- I. Under Normal Operating Conditions, refund checks to subscribers will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).
- II. Under Normal Operating Conditions, Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle. Such approval and processing will not be unreasonably delayed.
- III. Bills will be considered paid when appropriate payment is received by Grantee or its authorized representative. Appropriate time considerations will be included in Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.
 - a. If subscribers accidentally remit a payment to Grantor, Grantor will notify Grantee and forward payment to Grantee. If such notice is received by Grantor before the due date, such payment will be considered on time.

G. Rates, Fees and Charges

- I. Grantee will not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Grantee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Grantee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Grantee's equipment (for example, a dog chew).
- II. Grantee will provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.

H. Disconnection/Denial of Service

- I. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit will be automatically issued to the Subscriber.
- II. Nothing in these standards will limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, abusive and/or threatening behavior toward Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.
- III. Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Grantee. No charge will be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request unless there is a delay in returning Grantee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber will not be responsible for Cable Services received after the day following the date the disconnect request is received by Grantee. For purposes of this subsection, the term "disconnect" will include

Subscribers who elect to cease receiving Cable Service from Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

- IV. If by reason of force majeure the Grantee is unable to provide service to the subscriber, or the subscriber is unable to utilize wireline cable services, charges for such services will be discontinued at the time of the force majeure event.

I. Communications with Subscribers

- I. Grantee will comply with federal regulations including, but not limited to:
 - a. 47 C.F.R. §76.952(a). Providing Grantor’s information to Subscribers
 - b. 47 U.S.C. §551. Privacy rights of Subscribers.
- II. Grantee will provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers or in hard copy format to Grantor, at any time upon request, and, subject to this Section, at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Grantee:
 - a. Products and Cable Service offered;
 - b. Prices and options for Cable Services and condition of subscription to Cable Services. Prices will include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Grantee related to Cable Service;
 - c. Installation and maintenance policies including, when applicable, information regarding the Subscriber’s in-home wiring rights during the period Cable Service is being provided;
 - d. Channel positions of Cable Services offered on the Cable System;
 - e. Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Grantee about all complaints and questions;
 - f. Procedures for requesting Cable Service credit;
 - g. The availability of a parental control device;
 - h. Grantee practices and procedures for protecting against invasion of privacy; and
 - i. The address and telephone number of Grantee’s office to which complaints may be reported.
- III. All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Grantee will wear a clearly visible identification card bearing their name and photograph. Grantee will make reasonable efforts to account for all identification cards at all times. Every service vehicle of Grantee and its contractors or subcontractors will be clearly identified as such to the public. Specifically, Grantee vehicles will have Grantee’s logo plainly visible. The vehicles of those contractors and subcontractors working for Grantee will have the contractor’s / subcontractor’s name plus markings (such as a magnetic door sign) indicating they are under contract to Grantee.
- IV. All notices identified in this Section to subscribers will be by either:
 - a. A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
 - b. A separate electronic notification.
- III. Grantee will provide reasonable notice to Subscribers and Grantor of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including Channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Grantee. If the change is not within Grantee’s control, Grantee will provide an explanation to Grantor of the reason and expected length of delay. Grantee will provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.
- VIII. Notices of changes in rates will indicate the Cable Service new rates and old rates, if applicable.

- IX. Notices of changes of Cable Services and/or Channel locations will include a description of the new Cable Service, the specific Channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.
- X. Every notice of termination of Cable Service will include the following information:
 - a. The name and address of the Subscriber whose account is delinquent;
 - b. The amount of the delinquency for all services billed;
 - c. The date by which payment is required in order to avoid termination of Cable Service; and
 - d. The telephone number for Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.

8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

8.1 Compensation

A. Franchise Fee.

As compensation for the Franchise to be granted, and in consideration of permission to use the Streets and Public Ways of the Grantor for the construction, operation, and maintenance of a Cable System providing Cable services, within the Franchise Area and to defray the costs of Franchise regulation, the Grantee will pay to Grantor an amount equal to five percent (5%) of Gross Revenues. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below or above the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and will pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to limit a higher or lower permissible amount, then Grantee will pay the higher or lower amount up to the maximum allowable by law.

Grantor and Grantee agree that the sum of Franchise fee and additional commitment set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenue in any twelve (12) month period. If allowed under Federal Law and with written 60 (sixty) day notice to Grantor, Grantee may offset or deduct the amount allowed by law from Grantee's payment of franchise fees. Grantee's notice to Grantor will provide Grantor detailed and specific information on amounts claimed as credits or offsets.

Within thirty (30) days of a request from Grantor, Grantee will make available an up-to-date list of all Affiliates receiving Gross Revenues as such revenues are defined in this Franchise.

B. Bundling

If Cable Services subject to the Franchise fee required under this Franchise are provided to Subscribers in conjunction with non-Cable Services, Grantee will not allocate revenue between Cable Services and non-Cable Services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise fee obligations to Grantor.

C. Payment of Franchise Fees

- I. Payments due under this Section will be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment will be due and payable no later than thirty (30) days after the dates listed in the previous sentence. At the time of quarterly payment, the Grantee will submit a report to the Grantor, verified by an officer

of Grantee, which will contain an accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments. Grantee will provide additional information request by Grantor within 15 days, if so requested by Grantor, at no cost to Grantor.

- II. No acceptance of any payment will be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid will be subject to audit and re-computation by Grantor.
- III. Payments received after the due date specified in this section 8.1.C will be subject to Penalties and Interest as specified in Woodburn's Utility Service Ordinance, section 14, heretofore or hereafter amended.
- IV. Payment of the franchise fees under this Agreement will not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee in connection with the operation of the Cable System that may be imposed by Grantor.

8.2 Faithful Performance Bond

- A. Within sixty (60) days after the Effective Date of this Franchise, the Grantee will furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor in the penal sum of Three hundred and fifty thousand dollars (\$350,000.00), conditioned that the Grantee will well and truly observe, fulfill, and perform each term and condition of this Franchise. Such bond will be in a form acceptable to the Grantor and maintained by the Grantee throughout the term of this Franchise.
- B. Grantee will pay all premiums charged for any bond required under Section 8.2(A), and unless the Grantor specifically directs otherwise, will keep the same in full force and effect at all times through the later of either:
 - I. The remaining term of this Franchise; or
 - II. If required by the Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.
- C. The bond will contain a provision that it will not be terminated or otherwise allowed to expire without thirty (30) days written notice first given to the Grantor. The bond will be subject to the approval of the Grantor as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee will file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond will not expire or be terminated without thirty (30) days prior written notice to the Grantor.
- D. In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance will give the Grantor substantially the same rights and guarantees provided by a faithful performance bond.

8.3 Damages and Defense

- A. The Grantee agrees and covenants to defend, indemnify and hold harmless the Grantor, and its officers, agents, employees and representatives, from and against any and all claims, damages, loss, liability, cost or expense, including expert witness and other consultants, court and appeal costs and

penalties, including but not limited to attorney fees or expenses, including without limitation, copyright infringement, defamation and all other damages, arising out of any reason of any construction, excavation, operation, maintenance, reconstruction or any other act done by the Grantee within the Franchise Area, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, except to the extent such claims, damages and penalties are caused by the negligent or grossly negligent acts or omissions of the Grantor, its officers, agents and employees. Grantor will give Grantee prompt written notice of any claim which Grantee will defend with counsel of its own choosing and no settlements or compromise of any such claim will be done without the prior written approval of the Grantor. Grantee will consult and cooperate with the Grantor while conducting its defense of the Grantor and the Grantor will fully cooperate with Grantee and Grantee's counsel. Nothing in this Section 8.3 will be deemed to limit the Grantors' option to hire its own counsel.

- B. If the Grantee fails to defend as required in Section 8.3(A), then the Grantee agrees to and will pay all expenses incurred by Grantor, and its officers, agents, employees, and representatives, in defending itself with regard to all claims, damages and penalties mentioned in Section 8.3(A). These expenses will include all out-of-pocket expenses, such as attorney fees, witness fees and costs at trial and appeal, and will also include the value of any services rendered by any employees or contractors of the Grantor.

8.4 Liability Insurance and Indemnification

- A. The Grantee will maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows.
- B. The insurance will provide coverage at all times for not less than \$2,000,000 for personal injury to each person, \$2,000,000 aggregate for each occurrence, and \$1,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence, plus costs of defense. The insurance will be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in subsection (B) of this Section will be subject to change from time to time to the extent necessary to provide coverage at least as great as the limits on the City's liability under the Oregon Tort Claims Act.

The evidence of coverage for Workers' Compensation will show that it includes State of Oregon Statutory Limits, and Employer's Liability limits of at least \$2,000,000.

Any insurance carrier will have an A.M. Best rating of "A" or better, or a Best Financial Performance Rating of "7" or better and be authorized to do business in the State of Oregon.

- C. The insurance will be without prejudice to coverage otherwise existing and will name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance will protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable

if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

- D. The insurance will provide that the insurance will not be canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 without thirty (30) days written notice first being given to the City. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 within the term of this Franchise, Grantee will provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- E. Grantee will maintain on file with the City a certificate of insurance certifying the coverage required above, which certificate will be subject to the approval of the City as to the adequacy of the certificate and of the insurance certified under the requirements of this Section 8.4.

The certificate will show that the general liability portion of the insurance includes:

- I. Broad form property damage;
- II. Products and completed operations;
- III. Explosion, collapse, and underground exposures;
- IV. Contractual liability; and
- V. Owners and contractors protective coverage.

- F. Failure to maintain adequate insurance as required under this Section 8.4 will be cause for immediate termination of this Franchise by the City subject to Grantee's right to cure as provided in Section 7.4.
- G. The Grantee will also indemnify, defend and hold harmless the Grantor and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section arising from operations of the Grantee within the Franchise area.

9. RIGHTS RESERVED TO GRANTOR

9.1 Grantor Acquisition of the Cable System

The parties will be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either the Grantor or the Grantee under Section 627 of the Act, and any provision of this Agreement that purports to diminish such rights will be deemed superseded by the Act.

9.2 Right to Perform Franchise Audit or Review

The Grantor will have the right to perform, or cause to have performed, a formal and/or informal audit or review of the Grantee's books and records and, for the specific purposes of Franchise enforcement effort, the books and records of any parent or Affiliate company, for the purpose of determining the Gross Revenues of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as franchise and PEG fees to the Grantor by the Grantee for the provision of Cable Services within the Franchise Area, provided that any audit must be commenced not later than three (3) years after the date on which fees for any period being audited were due. The cost of any such audit will be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of two percent (2%) or more in fees that are required by this Franchise, then the Grantee will, within thirty (30) days of being requested to do so by the Grantor, reimburse the

Grantor for all expenses of performing the audit, to a maximum of \$30,000 (thirty thousand dollars).

Grantee will provide, at Grantee's sole expense any records requested by the Grantor for the purposes of an audit or review.

Nothing in this Section implies or will be interpreted to limit or waive any rights of the Grantor or its legal recourse through the courts to obtain records necessary to the enforcement of this franchise.

9.3 Right of Inspection of Construction

The Grantor or its representatives will have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise Agreement and to make such tests as it will find necessary to ensure compliance with the terms of this Franchise, other pertinent provisions of law, and other rules or regulations of the Grantor.

9.4 Intervention

The Grantee will not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is a party which may have a direct adverse effect upon the construction, upgrade, maintenance or operation of the Cable System.

9.5 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its revocation, as provided for herein, and subject to Grantee's rights under Section 626 of the Cable Act, the Grantor will have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the Cable System from all Streets and Public Ways within the Franchise Area. If the Grantee fails to do so within 120 (one hundred twenty) days of Grantor's request, or within a mutually agreed to longer period of time as agreed to by both parties, then the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, will be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor. Notwithstanding the other provisions of this section, the Grantee, by written notice to the Grantor, may request that Grantor allow the Cable System to remain in place. Grantor may deny Grantee's request and require Grantee to remove the above ground Cable System facilities from the Streets and Public Ways or modify the Cable System to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The parties agree that Grantee has the right to abandon its underground cable facilities.

9.6 Inspection of Facilities

Grantor may inspect upon request any of the Grantee's facilities and equipment to confirm compliance with this Agreement at any time upon at least twenty-four (24) hours' notice, during regular business hours, or in case of an emergency, upon demand without prior notice.

10. RIGHTS OF INDIVIDUALS PROTECTED

10.1 Discriminatory Practices Prohibited

- A. The Grantee will not deny service, deny access, or otherwise unlawfully discriminate against Subscribers or persons on the basis of race, color, religion, national origin, sexual orientation, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee will comply at all times with all applicable federal, state, or local laws, rules and

regulations relating to nondiscrimination.

- B. The Grantee will use best efforts to assure maximum practical availability of Grantee's services and facilities to all Subscribers, regardless of disability, including the provision of a remote-control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.
- C. For hearing impaired customers, the Grantee, upon request, will provide information concerning the cost and availability of equipment to facilitate the reception of basic service for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- D. Upon request by a Subscriber or potential Subscriber, the Grantee will make a reasonable effort to provide information required under this franchise, or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- E. Nothing in this subsection 10.1 will be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged residents.

10.2 Unauthorized Monitoring or Cable Tapping Prohibited

The Grantee will not, nor will Grantee allow any other person, agency, or entity to Tap, or arrange for the Tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose whatsoever, without the Subscriber's written consent or a valid court order or a valid request from a law enforcement agency permitting the Tapping.

Grantee may Tap a cable, line, Signal input device or Subscriber outlet or receiver to 1) determine the number of viewers watching a program where the identities of the viewers are not determined; 2) perform Cable System maintenance and verify technical performance; and 3) identify theft of services, without the Subscriber's written consent.

10.3 Privacy and Other Rights

The Grantee and the Grantor will maintain constant vigilance with regard to possible abuses of the right of privacy and any other civil right of any Subscriber or Person resulting from any device or signal associated with Cable Service. The Grantee will not utilize two-way communication capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind.

10.4 Permission of Property Owner Required

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee will be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee will remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee will perform all installations and removals in a workmanlike manner and will be responsible for any damage to residences or other property caused by the installation.

10.5 Sale of Subscriber Lists and Personalized Data Prohibited

The Grantee is be subject to 47 U.S.C Section 551 (Section 631 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.

11. TERMINATION AND EXPIRATION**11.1 Grantor's Rights in Lieu of Revocation**

The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. § 555a, as may be amended, is applicable to this Agreement.

11.2 Expiration

Upon expiration of this Franchise, the parties will abide by the renewal provisions of the Cable Act, as amended from time to time.

11.3 Continuity of Service Mandatory

It will be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the Cable System the Grantee will make its best effort to ensure that all Subscribers receive continuous uninterrupted service.

12. OPERATION AND MAINTENANCE**12.1 Open Books and Records**

The Grantor will have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time upon reasonable notice all records of the Grantee which relate to the operation of the Cable System, provision of Cable Service, or the Grantee's performance under this Franchise. Access to such records will be maintained or made available at no cost to the Grantor within the Franchise Area during normal business hours if maintained locally, or, if not available locally, provided within ten (10) days of notice from the Grantor requesting such records at an agreed upon location within the Franchise Area. Access to the aforementioned records will not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information," nor on the basis that they contain trade secrets. To the extent allowed under Oregon law, the Grantor will protect proprietary information including trade secrets of the Grantee from disclosure.

The Grantee will also provide, upon request and reasonable notice, in the manner set forth in this Section the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services within the Franchise Area; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System

under this Franchise and other information necessary to verify compliance with this Franchise or other ordinances of the Grantor.

Within 45 (forty-five) days of written request, Grantee will provide to Grantor, at no cost to Grantor, any information that allows Grantor to easily and sufficiently verify compliance with all the requirements of this Franchise.

12.2 Communication with Regulatory Agencies

A list and copies of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any Affiliate, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Cable Services or the Cable System in the Franchise Area pursuant to this Franchise Agreement, will be submitted to the Grantor upon request. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting Cable Services or the Cable System within the Franchise Area, will be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an Affiliate.

12.3 Reports

- A. Quarterly Reports. Upon written request by the Grantor, within thirty (30) days after the end of each fiscal quarter, Grantee will provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee. Grantee will not be required to maintain any reports, regarding this section 12.3 (A), for a period longer than 24 months.
- B. Annual Report. No later than ninety (90) days following the end of the Grantee's fiscal year each year, Grantee will present, upon request, a written report to the Grantor which will include:
 - I. Financial reports that are normally prepared for the Grantee for the previous calendar year, including gross revenues from all sources, gross Subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet.
 - II. A summary of the previous year's activities including, but not limited to, monthly Subscriber totals in each category and new services.

All financial reports required under this subsection will be presented to the Grantor accompanied by such notes and explanations as are required or requested by Grantor to fully and easily understand the reports. Such notes and explanations will include, but not be limited to, an explanation of any and all deductions made from Gross Revenues for the calculation of franchise fees to be paid to the Grantor.

- C. Monitoring and Compliance Reports. Upon request written, the Grantee will provide a written report of technical performance tests for the Cable System required by applicable FCC rules and regulations as now or hereinafter constituted. In addition, the Grantee will upon request provide reports of the test and compliance procedures established by this Franchise Agreement, Grantee will not be required to maintain any reports, regarding this section 12.3 (C), for a period longer than twenty-four (24) months.
- D. All reports and records required under this or any other Section will be furnished to Grantor at the sole expense of Grantee.

12.4 Safety

- A. The Grantee will, at all times, employ the standard of care attendant to the risks involved and will install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- B. The Grantee will install and maintain its wires, cable, fixtures, and other equipment, including the drop to the Subscriber's premise, in accordance with the requirements of the National Electrical Safety Code, industry standards, and in such manner that they will not interfere with the installations of any public utility.
- C. All lines, equipment and connections in, over, under, and upon either the Streets and Public Ways of Grantor or private property within boundaries of Grantor, wherever situated or located, will at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

13. MISCELLANEOUS PROVISIONS

13.1 Compliance with Laws

The Grantee will comply with all federal and state laws and regulations, including regulations, rules and orders of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise. If, any such federal or state laws, rules or regulations; or ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established be in conflict or interfere with the existing rights of the Grantee or Grantor under this Franchise, Grantee and Grantor will work together and find a mutually acceptable resolution.

13.2 Severability and Preemption

Notwithstanding the provisions of Section 13.7 below, if any section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Franchise Agreement is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise will not be affected thereby but will be deemed as a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Franchise will be valid and enforceable to the fullest extent permitted by law.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision will be read to be preempted only to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision will thereupon return to full force and effect, and will thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments

to this Franchise negotiated pursuant to this Section as a result of such provision being preempted will no longer be of any force or effect.

13.3 Captions

The captions to Sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the Sections and provisions contained herein. Such captions will not affect the meaning or interpretation of this Franchise Agreement.

13.4 No Recourse Against the Grantor

Grantee's recourse against the City of Woodburn, its officers, agents and employees, for any claim arising from any provision or requirement of this Franchise, will be limited as prescribed by applicable laws, rules and regulations as in effect from time to time including without limitation the restrictions set forth in 47 USC & 555a, the Local Government Antitrust Immunity Act and sovereign immunity. Except as provided under applicable law, the Grantee will have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Franchise Agreement or any part thereof is determined to be invalid.

13.5 Nonenforcement by Grantor

The Grantee will not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

13.6 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee will not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein will include the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and similar occurrences outside the control of the Grantee. The Grantee agrees, however, to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

13.7 Entire Agreement

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

13.8 Consent

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this Agreement, such consent or approval will not be unreasonably withheld.

13.9 Notices and Time Limit for Grantee Communications

Grantee will provide any written communication required by this Franchise within thirty (30) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a

communication is identified in the Franchise.

13.10 Consistency of Franchise with Cable Act

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Act.

13.11 Notice

Any notice provided for under this Franchise will be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the City: City of Woodburn
Attn: ROW Manager
270 Montgomery St.
Woodburn, OR 97222

If to the Grantee: Comcast of Oregon, I, Inc.
Attn: Government Affairs
11309 SW 68th Parkway
Tigard, OR 97223

13.12 Public Disclosure

Subject to the Oregon Public Records Law, whenever pursuant to this Franchise Agreement, Grantee will make available for inspection by the Grantor or submit to the Grantor reports containing information considered confidential and/or proprietary by the Grantee, the Grantor will not disclose or release such reports or information to the public without Grantee’s written consent, provided that each page of such report or information is clearly marked as confidential and/or proprietary.

13.13 Time is of the Essence

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time will be deemed to be of the essence.

13.14 Reservation of Rights

Notwithstanding any provision to the contrary, the parties reserve any and all rights at law or in equity regarding any enforcement proceeding or other matters hereunder.

IN WITNESS WHEREOF, the City has executed this Agreement on the date set forth below and Grantee will execute this Agreement by submission of the executed Acceptance required in Section 3.7.

CONSIDERED and APPROVED this ____ day of _____, 2020.

CITY OF WOODBURN

By: _____

Title: _____

EXHIBIT A: ACCEPTANCE

ROW Manager
City of Woodburn

This is to advise the City of Woodburn, Oregon (the “Grantor”) that Comcast of Oregon I, Inc. (the “Grantee”) hereby accepts the terms and provisions of Ordinance No. _____ passed by the City Council on _____ (the “Franchise”) granting a Franchise for five (5) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise.

By executing and returning this acceptance form, the Grantee also attests that there are no parent corporations of Grantee apart from Comcast of Oregon I, Inc.

COMCAST OF OREGON I, INC.

BY: _____

TITLE: _____

DATE: _____



Agenda Item

March 22, 2021

TO: Honorable Mayor and City Council through City Administrator

FROM: Chris Kerr, Community Development Director
Dan Handel, AICP, Associate Planner

SUBJECT: **Annexation of Approximately 73 Acres of Territory Known as Weisz Family Properties (ANX 2020-04)**

RECOMMENDATION:

Adopt the ordinances annexing the subject property and designating City zoning.

BACKGROUND:

On February 22, 2021, the City Council opened a public hearing for the Annexation and Zoning Map Change application package (ANX 2020-04 & ZC 2020-03) by Mackenzie on behalf of Specht Woodburn LLC for the territory known as the Weisz Family Properties. The territory includes Tax Lots 052W140000200, 600, and 800 (no assigned addresses), totaling approximately 73 acres of undeveloped farmland, as well as portions of Butteville Road and Parr Road rights-of-way.

After opening the public hearing, the Council voted to continue the hearing at date certain of March 8, 2021. On March 8, after closing the public hearing, the City Council motioned to grant tentative approval to the application package and directed staff to submit ordinances for consideration.

DISCUSSION:

Annexation is a policy decision by the Council.

Decision-making hinges upon the annexation criteria in Woodburn Development Ordinance (WDO) 5.04.01C. The attached Analyses & Findings document from the Planning Commission staff report of January 14, 2021 addressed them and found them met.

Agenda Item Review: City Administrator City Attorney Finance

FINANCIAL IMPACT:

Annexing the territory into City limits would subject it to City taxing authority, including property tax that generates the largest source of funding for general fund services such as the library, policing, and parks and recreation.

The City permanent tax rate is \$6.0534 per thousand dollars – equal to a millage rate of 6.0534 mils – as set by Oregon Ballot Measure 50 in 1997-98. The property is undeveloped farmland. The table below simplifies and grossly estimates tax revenue:

Tax Lot Number	Marion County Assessed Value (AV)	Gross Estimate of City Property Tax (6.0534 mils)
052W140000200	\$13,170	\$79.72
052W140000600	\$20,090	\$121.61
052W140000800	\$76,030	\$460.24
	Total:	\$661.57

The estimate neither accounts for how the City might assess property value differently than Marion County nor excludes the unknown cost of providing basic utility services to the properties that the City does not already provide. Crucially, future site development would increase the assessed valuation (AV) while also increasing City utility and other service costs.

ATTACHMENTS:

1. Ordinance to annex
 - A. Exhibit A: Legal Descriptions & Maps
 - B. Exhibit B: Analyses & Findings
2. Ordinance to designate City zoning
 - A. Exhibit A: Legal Descriptions & Maps

COUNCIL BILL NO. 3145

ORDINANCE NO. 2586

AN ORDINANCE ANNEXING APPROXIMATELY 73.08 ACRES OF TERRITORY KNOWN AS THE WEISZ FAMILY PROPERTIES INTO THE CITY OF WOODBURN

WHEREAS, the subject properties are owned by Weisz Family LLC, and are legally described and mapped in Exhibit "A", which is affixed hereto and by this reference incorporated herein; and

WHEREAS, the subject properties are Marion County Tax Lots 052W140000200, 052W140000600, and 052W140000800; and

WHEREAS, consistent with Oregon Revised Statutes (ORS) 222.111(2) the owner of real property in the territory to be annexed initiated by petition a proposal for annexation, a copy of the petition being on file with the City Recorder (ANX 2020-04); and

WHEREAS, the applicant, Specht Development Co., obtained written consent from the owners of the territory and has requested annexation of the subject property; and

WHEREAS, the properties to be annexed are within the City Urban Growth Boundary (UGB); and

WHEREAS, the properties to be annexed are contiguous to the City and can be served with City services; and

WHEREAS, on January 14, 2021 the Woodburn Planning Commission considered the annexation application and, after a duly advertised public hearing, recommended approval of the annexation; and

WHEREAS, on February 22, 2021, the Woodburn City Council opened a public hearing and continued the hearing until date certain of March 8, 2021; and

WHEREAS, the Woodburn City Council continued the public hearing on March 8, 2021, reviewed the record, heard all public testimony presented on said application, and upon deliberation concluded that the proposed annexation meets the applicable approval criteria under City of Woodburn Development Ordinance (WDO) 5.04.01C.; **NOW, THEREFORE**,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. That the subject properties, legally described and mapped in Exhibit "A", are annexed to the City of Woodburn.

Section 2. That the City Council adopts the Analysis & Findings, affixed hereto as Exhibit "B" and by this reference incorporated herein.

Approved as to form: _____
City Attorney Date

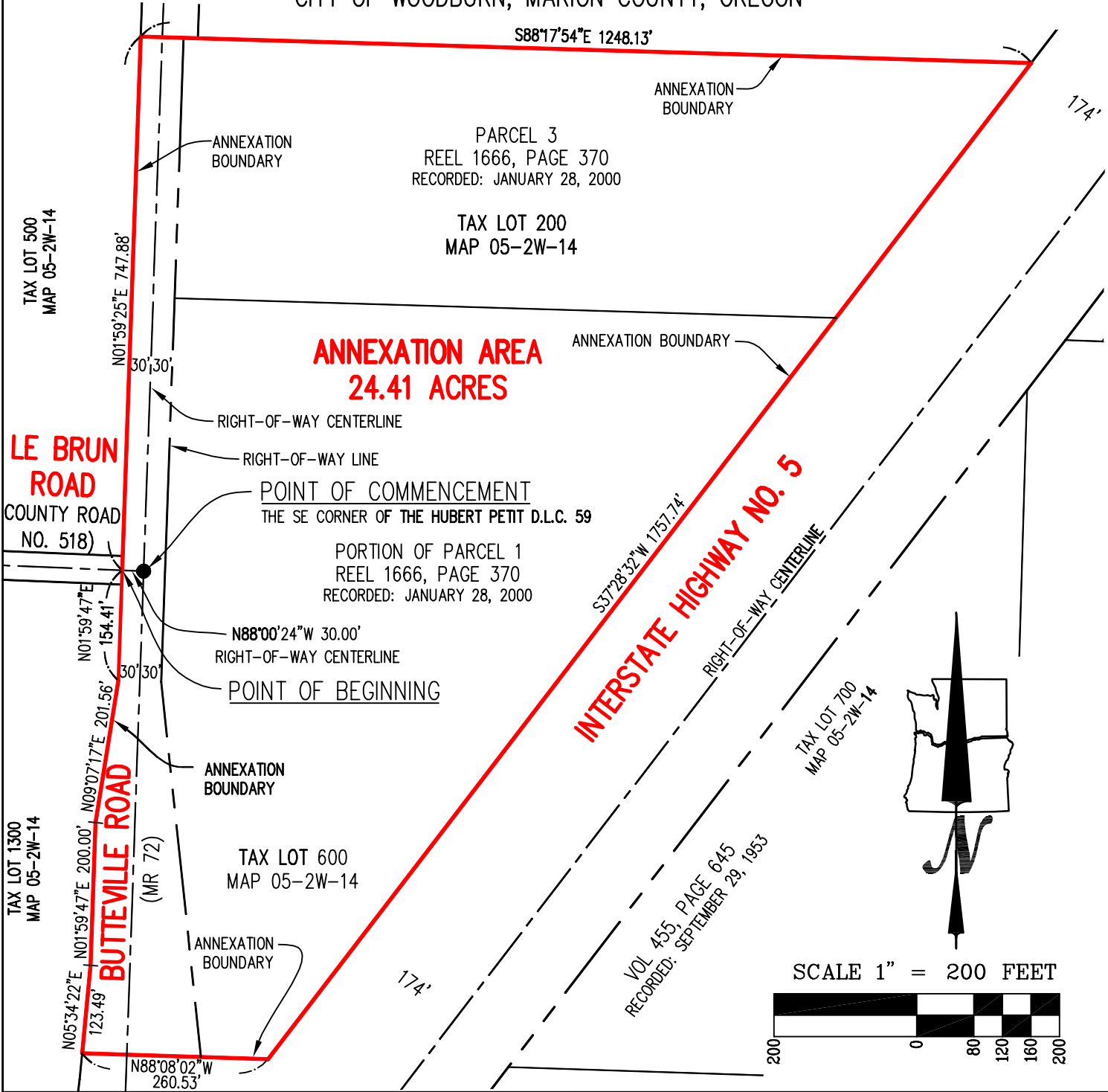
Approved: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

ANNEXATION EXHIBIT MAP

LOCATED IN THE NW AND SW 1/4 OF SECTION 13 AND THE NE AND SE 1/4 OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 2 WEST, W.M., CITY OF WOODBURN, MARION COUNTY, OREGON



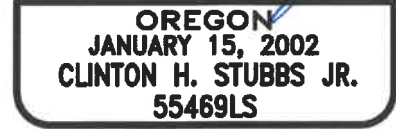
PREPARED FOR: SPECHT DEVELOPMENT INC. 10260 SW GREENBURG ROAD SUITE 170 PORTLAND, OR 97223	JOB NAME: WOODBURN	<h1>NORTHWEST</h1> <h1>SURVEYING, Inc.</h1> 1815 NW 169th PLACE, SUITE 2090 BEAVERTON, OR 97006 PHONE: 503-848-2127 FAX: 503-848-2179 nwsurveying@nwsrvy.com
	JOB NUMBER: 1824	
	DRAWING NUMBER: 1824 ANNEX	
	DRAWN BY: CDW	
	CHECKED BY: CHS	



1815 NW 169th Place, Suite 2090
Beaverton, OR 97006
Telephone: 503-848-2127



Clinton H. Stubbs Jr.



RENEWS: 06/30/22

Annexation Description Weisz Family LLC (West)

September 30, 2020
NWS Project Number 1824
Page 1 of 1

A tract of land located in the northeast one-quarter and southeast one-quarter of Section 14, Township 5 South, Range 2 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Commencing at the southeast corner of the Hubert Petit Donation Land Claim No. 59, said point being marked by a 3 inch brass disk in a monument case located at the centerline-centerline intersection of Butteville Road and Le Brun Road; Thence along the centerline of said Le Brun Road, North 88°00'24" West 30.00 feet to a point on the westerly right-of-way line of Butteville Road (30.00 feet westerly from the centerline thereof, when measured at right angles) and the Point of Beginning.

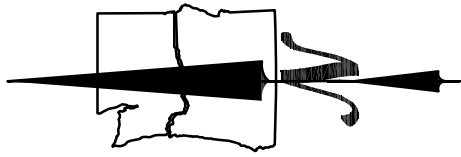
Thence along the westerly right-of-way line of said Butteville Road, North 01°59'25" East 747.88 feet to its intersection with the westerly extension of the south line of Lot 5 of "I-5 Logistics Center"; Thence departing the westerly right-of-way line of Butteville Road along said westerly extension and continuing along the southerly line of said Lot 5, South 88°17'54" East 1248.13 feet to the most southerly southeast corner thereof, said point being on the westerly right-of-way line of Interstate Highway No. 5 (174.00 feet westerly from the centerline thereof, when measured at right angles); Thence along the westerly right-of-way line of said Interstate Highway No. 5, South 37°28'32" West 1757.74 feet to its intersection with the southerly line of Parcel 1 described in a deed to Weisz Family LLC recorded on January 28, 2000 as Reel 1666, Page 370, Marion County Deed Records; Thence departing the westerly right-of-way line of Interstate Highway No. 5 along the southerly line of said Parcel 1 and continuing along the westerly extension thereof, North 88°08'02" West 260.53 feet to its intersection with the westerly right-of-way line of said Butteville Road (variable in width); Thence along the westerly right-of-way line of said Butteville Road the following four courses, North 05°34'22" East 123.49 feet; Thence North 01°59'47" East 200.00 feet; Thence North 09°07'17" East 201.56 feet; Thence North 01°59'47" East 154.41 feet to the Point of Beginning.

The above described tract of land contains 24.41 acres, more or less.

The basis of bearings for this description is the Oregon State Plane Coordinate System, North Zone, NAD 83.

ANNEXATION EXHIBIT MAP

LOCATED IN THE NW AND SW 1/4 OF SECTION 13 AND THE NE AND SE 1/4 OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 2 WEST, W.M., CITY OF WOODBURN, MARION COUNTY, OREGON



SCALE 1" = 300 FEET

EVERGREEN RD

REEL 3121, PAGE 50
RECORDED:
NOVEMBER 3, 2009

REEL 3121, PAGE 50
RECORDED:
NOVEMBER 3, 2009

REEL 3174,
PAGE 207
RECORDED:
APRIL 22, 2010

PARR ROAD NE

S02°15'41"W 1025.51'

S87°57'22"E
74.00'

POINT OF BEGINNING

"PARADISE POINTE"

S87°57'22"E 2036.55'

**ANNEXATION AREA
50.74 ACRES**

PARCEL 11
REEL 1666, PAGE 370
RECORDED: JANUARY 28, 2000

TAX LOT 800
MAP 05-2W-14

N87°57'22"W 2152.19'

PARCEL 12
REEL 1666, PAGE 370
RECORDED: JANUARY 28, 2000
TAX LOT 900
MAP 05-2W-14

TAX LOT 2000
MAP 05-2W-14
REEL 2803, PAGE 467
RECORDED: APRIL 26, 2007

STACEY ALLISON WAY

REEL 3121, PAGE 97
RIGHT-OF-WAY CENTERLINE
RIGHT-OF-WAY LINE

INTERSTATE HIGHWAY NO. 5

N37°28'32"E
88.14'

N01°42'33"E 953.70'

TAX LOT 700
MAP 05-2W-14

VOL 455, PAGE 645
RECORDED:
SEPTEMBER 29, 1953

PARCEL 5
REEL 1666, PAGE 370
RECORDED:
JANUARY 28, 2000
TAX LOT 1000
MAP 05-2W-14

PREPARED FOR:

SPECHT DEVELOPMENT INC.
10260 SW GREENBURG ROAD
SUITE 170
PORTLAND, OR 97223

JOB NAME: WOODBURN
JOB NUMBER: 1824
DRAWING NUMBER: 1824 ANNEX
DRAWN BY: CDW
CHECKED BY: CHS

**NORTHWEST
SURVEYING, Inc.**

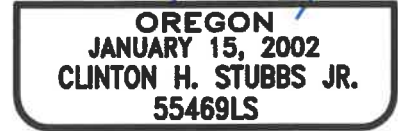
1815 NW 169th PLACE,
SUITE 2090
BEAVERTON, OR 97006
PHONE: 503-848-2127
FAX: 503-848-2179
nwsurveying@nwsrvy.com



1815 NW 169th Place, Suite 2090
Beaverton, OR 97006
Telephone: 503-848-2127



Clinton H. Stubbs Jr.



RENEWS: 06/30/22

Annexation Description
Weisz Family LLC (East)
September 30, 2020
NWS Project Number 1824
Page 1 of 1

A tract of land located in the northwest and southwest one-quarter of Section 13 and the northeast and southeast one-quarter of Section 14, Township 5 South, Range 2 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at a 5/8 inch iron rod with a yellow plastic cap stamped "Wilhelm ENG OR LS 2413", Located at the southeast corner of Lot 36 of "Paradise Pointe", said point also being on the north line of that property described as Parcel 11 in a deed to Weisz Family LLC Recorded on January 28, 2000 as Reel 1666, Page 370, Marion County Deed Records; Thence along the southerly line of said Paradise Pointe, South 87°57'22" East 74.00 feet to the southeast corner thereof, said point being on the westerly line of that property described in a deed to George Cherepanov recorded on November 3, 2009 in Reel 3121, Page 50, Marion County Deed Records; Thence along the westerly line of said Cherepanov property and continuing along the southerly extension thereof, South 02°15'41" West 1025.51 feet to an angle point on the centerline of Parr Road NE; Thence along the easterly extension of the northerly line of that property described as Parcel 12 in said Weisz Family LLC deed, and continuing along the northerly line of Parcel 12 and Parcel 5 of said deed, North 87°57'22" West 2152.19 feet to a point on the easterly line of that property described in a deed to the State of Oregon recorded on September 29, 1953 in volume 455, page 645, Marion County Deed Records; Thence along the easterly line of said State of Oregon property, North 01°42'33" East 953.70 feet to a point on the southeasterly right-of-way line of Interstate Highway No. 5 (100.00 feet southeasterly of the centerline thereof, when measured at right angles); Thence along the southeasterly right-of-way line of said Interstate Highway No. 5, North 37°28'32" East 88.14 feet to the southwest corner of that property described in a deed to the City of Woodburn recorded on November 30, 2009 in Reel 3127, Page 97, Marion County Deed Records, said point also being the most northerly northwest corner of said Parcel 11; Thence along the northerly line of said Parcel 11, South 87°57'22" East 2036.55 feet to the Point of Beginning.

The above described tract of land contains 50.74 acres, more or less.

The basis of bearings for this description is the Oregon State Plane Coordinate System, North Zone, NAD 83.

Analyses & Findings

This attachment to the staff report analyzes the application materials and finds through statements how the application materials relate to and meet applicable provisions such as criteria, requirements, and standards. They confirm that a given standard is met or if not met, they call attention to it, suggest a remedy, and have a corresponding recommended condition of approval. Symbols aid locating and understanding categories of findings:

<i>Symbol</i>	<i>Category</i>	<i>Indication</i>
✓	Requirement (or guideline) met	No action needed
✗	Requirement (or guideline) not met	Correction needed
⊖	Requirement (or guideline) not applicable	No action needed

Section references are to the [Woodburn Development Ordinance \(WDO\)](#).

Table of Contents

Location.....	1
Land Use & Zoning	1
Statutory Dates	3
Annexation Provisions	3
Zoning Map Change Provisions.....	8
Applicant Identity.....	9

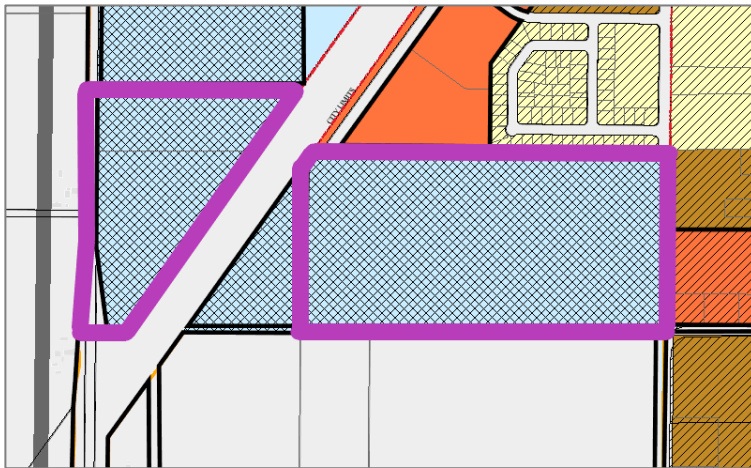
Location

<i>Addresses</i>	n/a – none assigned
<i>Tax Lots</i>	052W140000200, 600, & 800
<i>Nearest intersection</i>	Parr Rd & Butteville Rd

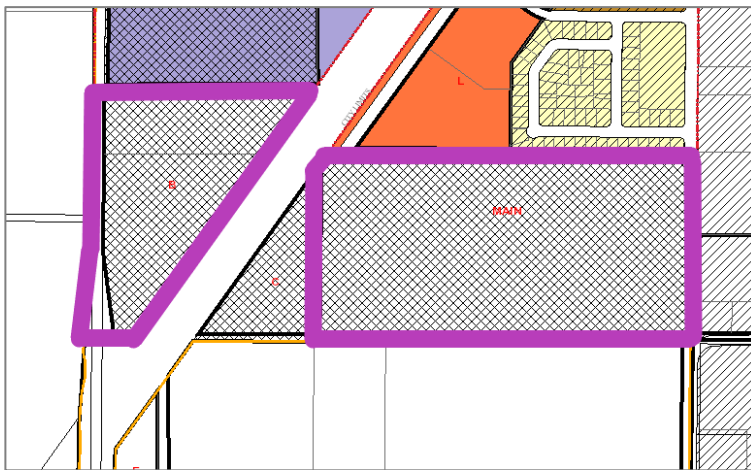
Land Use & Zoning

<i>Comprehensive Plan Land Use Designation</i>	Industrial
<i>Zoning District, Upon Annexation</i>	Southwest Industrial Reserve (SWIR)
<i>Overlay Districts</i>	SWIR; Interchange Management Area (IMA)
<i>Existing Uses</i>	Undeveloped; farmland

For context, the comprehensive plan land use map designations and zoning are illustrated below and the zoning is tabulated further below:



Comprehensive Plan Map with subject properties outlined in purple.



Zoning Map with subject properties outlined in purple.

<i>Cardinal Direction</i>	<i>Adjacent Zoning</i>
North	East of I-5: Commercial General (CG); Nodal Single-Family Residential (RSN) West of I-5: SWIR
East	East of I-5: Nodal Multi-Family Residential (RMN); CG West of I-5: CG; SWIR
South	East of I-5: No City zoning; outside City Limits West of I-5: No City zoning; outside City Limits
West	East of I-5: SWIR West of I-5: No City zoning; outside City Limits

Statutory Dates

<i>Application Completeness</i>	December 3, 2020
<i>120-Day Final Decision Deadline</i>	April 2, 2021 per Oregon Revised Statutes (ORS) 227.178 . (The nearest and prior regularly scheduled City Council meeting is March 22, 2021.)

Annexation Provisions

4.01.07 Consolidated Applications

An applicant may request, in writing, to consolidate applications needed for a single development project. Under a consolidated review, all applications shall be processed following the procedures applicable for the highest type decision requested. It is the express policy of the City that development review not be segmented into discrete parts in a manner that precludes a comprehensive review of the entire development and its cumulative impacts.

The application package includes “Annexation” and “Official Zoning Map Change, Owner Initiated”, both of which are Type IV reviews per 5.04. The applicant requested a consolidated Type IV review for the proposal.

✓ The provision is met.

2.05 Overlay Districts

2.05.02 Interchange Management Area Overlay District

B. Applicability

The provisions of this Section apply to all Type II – V land use applications that propose to allow development that will generate more than 20 peak hour vehicle trips (based on the latest Institute of Transportation Engineers Trip Generation Manual) on parcels identified in Table 2.05A. The provisions of this Section apply to all properties within the boundary of the IMA.

The subject properties are within the IMA overlay district and encompass land within subareas B and D. Annexation is a Type IV application however there is no development proposed alongside the proposed annexation therefore the provisions are not applicable.

⊖ The provisions are not applicable.

2.05.06 Southwest Industrial Reserve

A. Purpose

The Southwest Industrial Reserve (SWIR) is intended to protect suitable industrial sites in Southwest Woodburn, near Interstate 5, for the exclusive use of targeted industries identified in the Comprehensive Plan. This broad objective is accomplished by master planning, retention of large industrial parcels, and restricting non-industrial land uses.

B. Application of the SWIR Zone

Land designated on the Comprehensive Land Use Plan Map as Southwest Industrial Reserve shall only be zoned SWIR.

The Comprehensive Plan Map designates the subject properties as within the SWIR. Per Figure 2.04A, the properties encompass land within SWIR Development Subareas B and D. Upon annexation into City limits, the Zoning Map will be updated to illustrate the subject properties zoned SWIR.

C. Dimensional Standards:

The following dimensional standards shall be the minimum requirements for all development within the SWIR zone:

- 1. Land divisions may only be approved following approval of a master plan, as required in this ordinance.**
- 2. Lots in a SWIR zone shall comply with the standards of Table 2.04F. For a land division, at least one lot shall be sized to meet each of the required lot size ranges listed in Table 2.04F for each site, except that smaller required lots may be combined to create larger required lots.**

No land division is included with the proposal.

D. Master Planning Requirement

- 1. A master development plan shall be approved by the City Council for the entire area designated SWIR on the Comprehensive Land Use Plan Map, prior to annexation of any property within the SWIR Comprehensive Plan Map designation. The master plan shall be conceptual and non-binding in nature, but may be used as a general guide for development within the SWIR.**
- 2. The required master plan shall show:**
 - a. The location and rights-of-way for existing and planned streets, which shall provide access to all existing and proposed parcels, consistent with the Transportation System Plan;**
 - b. The location and size of existing and planned sanitary sewer, storm water and water facilities, at adequate levels to serve existing and proposed industrial development;**
 - c. The location and area of the Riparian Corridor and Wetlands Overlay District (RCWOD) as it affects existing and proposed industrial parcels. Planned streets and public facilities that cannot reasonably avoid the RCWOD shall be indicated;**
 - d. Parcels consistent with the lot sizes indicated in Table 2.05B;**
 - e. Pedestrian and bicycle connections consistent with the TSP.**

A SWIR master plan was adopted by the City Council in 2017 via Resolution No. 2110. This plan will guide future development review for the subject properties.

E. Removal of the SWIR Zone

Removal of the SWIR zone from any area or parcel shall require the following:

- 1. A revised Economic Opportunities Analysis and Industrial Site Suitability Analysis, consistent with the Goal 9 Rule (OAR Chapter 660, Division 9);**
- 2. A new Statewide Planning Goal 2 Exception that explains why other land within or adjacent to the UGB, that does not require an exception, cannot meet the purported need;**

- 3. A Comprehensive Plan Amendment that demonstrates compliance with all applicable Statewide Planning Goals, applicable goals and policies of the Marion County Framework Plan, and applicable goals and policies of the Comprehensive Plan;**
- 4. A Zoning Map amendment that demonstrates consistency with the Comprehensive Plan.**

The applicant is not requesting to remove the SWIR designation for the subject properties.

✓ The provisions are met.

5.04 Type IV (Quasi-Judicial) Decisions

5.04.01 Annexation

A. Purpose: The purpose of this Type IV review is to provide a procedure to incorporate contiguous territory into the City in compliance with state requirements, Woodburn Comprehensive Plan, and Woodburn Development Ordinance.

The subject properties are contiguous with City limits. This staff report reviews the proposal for compliance with the Woodburn Comprehensive Plan and WDO, both of which were acknowledged by the state to be in compliance with statewide planning goals.

B. Mandatory Pre-Application Conference: Prior to requesting annexation to the City, a Pre-Application Conference (Section 4.01.04) is required. This provides the city an opportunity to understand the proposed annexation and an opportunity to provide information on the likely impacts, limitations, requirements, approval standards, and other information that may affect the proposal.

A pre-application meeting for the proposal was held on October 13, 2020 (PRE 2020-23).

C. Criteria:

- 1. Compliance with applicable Woodburn Comprehensive Plan goals and policies regarding annexation.**

Section G. "Growth Management and Annexation" of the Woodburn Comprehensive Plan includes Annexation Goal G-2 and Annexation Policies G-2.1, G-2.2, and G-2.3.

The SWIR Master Plan, which was approved via Resolution 2110 in 2017, illustrates the conceptual layout of public services throughout the SWIR overlay district, which the subject properties are within. Tables 2.04E & F as well as section 2.05.06 of the WDO include provisions and standards for retaining large parcels of land for industrial development within the SWIR overlay district. The annexation criteria of 5.04.01C. also reflect the intent of the annexation policies in the Comprehensive Plan.

Because the proposal is consistent with the SWIR Master Plan and WDO criteria for the SWIR overlay district, it is also consistent with the applicable Woodburn Comprehensive Plan goals and policies for annexations.

- 2. Territory to be annexed shall be contiguous to the City and shall either:**
- a. Link to planned public facilities with adequate capacity to serve existing and future development of the property as indicated by the Woodburn Comprehensive Plan; or**
 - b. Guarantee that public facilities have adequate capacity to serve existing and future development of the property.**

Tax Lot 800 is adjacent to land annexed into City limits in 1992 via Ordinance No. 2095. Tax Lots 200 & 600 are adjacent to land annexed into City limits in 2017 via Ordinance No. 2548.

The application materials include a letter from the City Engineer (dated November 4, 2020) certifying there are no capacity issues with public water and sanitary sewer facilities. The SWIR Master Plan includes conceptual utility extension plans to serve land within the SWIR overlay district. These utility extensions would occur at the time of development of the subject properties.

- 3. Annexations shall show a demonstrated community need for additional territory and development based on the following considerations:**
- a. Lands designated for residential and community uses should demonstrate substantial conformance to the following:**
 - 1) The territory to be annexed should be contiguous to the City on two or more sides;**
 - 2) The territory to be annexed should not increase the inventory of buildable land designated on the Comprehensive Plan as Low or Medium Density Residential within the City to more than a 5-year supply;**
 - 3) The territory proposed for annexation should reflect the City's goals for directing growth by using public facility capacity that has been funded by the City's capital improvement program;**
 - 4) The site is feasible for development and provides either:**
 - a) Completion or extension of the arterial/collector street pattern as depicted on the Woodburn Transportation System Plan; or**
 - b) Connects existing stub streets, or other discontinuous streets, with another public street.**
 - 5) Annexed fulfills a substantial unmet community need, that has been identified by the City Council after a public hearing. Examples of community needs include park space and conservation of significant natural or historic resources.**

The subject properties are within the SWIR overlay district, which is an industrial land designation. These criteria are not applicable.

- b. Lands designated for commercial, industrial and other uses should demonstrate substantial conformance to the following criteria:**

- 1) The proposed use of the territory to be annexed shall be for industrial or other uses providing employment opportunities;**
- 2) The proposed industrial or commercial use of the territory does not require the expansion of infrastructure, additional service capacity, or incentives that are in excess of the costs normally borne by the community for development;**
- 3) The proposed industrial or commercial use of the territory provides an economic opportunity for the City to diversify its economy.**

The subject properties are within the SWIR overlay district, which is an industrial land designation. No development is proposed alongside the subject annexation. The approved SWIR Master Plan includes conceptual layouts for public infrastructure within the SWIR overlay district; this infrastructure would be constructed at private expense on site-by-site basis as development is proposed. Regarding 3), the applicant's narrative states on page 39:

"The subject property has significant potential to attract large-scale industrial users seeking locations with excellent access to Interstate 5, consistent with goals identified in the July 2016 Woodburn Target Industries Analysis (WTIA) (See Exhibit F). Because such sites are scarce in the region, annexation will set the stage for significant opportunities to grow and diversify the City's economy. This criterion is satisfied."

Staff concurs.

D. Procedures:

- 1. An annexation may be initiated by petition based on the written consent of:**
 - a. The owners of more than half of the territory proposed for annexation and more than half of the resident electors within the territory proposed to be annexed; or**
 - b. One hundred percent of the owners and fifty percent of the electors within the territory proposed to be annexed; or**
 - c. A lesser number of property owners.**
- 2. If an annexation is initiated by property owners of less than half of property to be annexed, after holding a public hearing and if the City Council approves the proposed annexation, the City Council shall call for an election within the territory to be annexed. Otherwise no election on a proposed annexation is required.**

The applicant's narrative addresses these provisions on page 39:

"This annexation request is submitted by the sole owner of the property, two (2) tracts containing a combined approximately 74 acres, representing a 100% ownership share. There is no residence on the subject property and no registered electors."

E. Zoning Designation for Annexed Property: All land annexed to the City shall be designated consistent with the Woodburn Comprehensive Plan, unless an application to re-designate the property is approved as part of the annexation process.

The Comprehensive Plan designates the subject properties as Industrial and within the SWIR overlay district. The territory will be assigned to the SWIR zoning district upon annexation.

F. The timing of public improvements is as follows:

- 1. Street dedication is required upon annexation.**
- 2. Dedication of public utility easements (PUE) is required upon annexation.**
- 3. Street improvements are required upon development.**
- 4. Connection to the sanitary sewer system is required upon development or septic failure.**
- 5. Connection to the public water system is required upon development or well failure.**
- 6. Connection to the public storm drain system is required upon development.**

The applicant's narrative states on page 40:

"... improvements will be required in conjunction with industrial development to meet projected levels of travel demand. These improvements are specified both by the TSP and the approved SWIR Master Plan. Street improvements and dedications can be required by conditions of approval in the Design Review process, to ensure that they are coordinated with developments. Additionally, right-of-way dedications can then be completed based on as-built documentation as part of the City's approval of public works construction and acceptance of the right-of-way dedications."

Staff concurs.

✓ The provisions of 5.04.01 are met.

Zoning Map Change Provisions

5.04.04 Official Zoning Map Change, Owner Initiated

A. Purpose: The purpose of an Owner Initiated Official Zoning Map Change is to provide a procedure to change the Official Zoning Map, in a manner consistent with the Woodburn Comprehensive Plan.

B. Criteria: The following criteria shall be considered in evaluating an Official Zoning Map Change;

- 1. Demonstrated need for the proposed use and the other permitted uses within the proposed zoning designation.**
- 2. Demonstrated need that the subject property best meets the need relative to other properties in the existing developable land inventory already designated with the same zone considering size, location, configuration, visibility and other significant attributes of the subject property.**
- 3. Demonstration that amendments which significantly affect transportation facilities ensure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:**
 - a. Limiting allowed land uses to be consistent with the planned function of the transportation facility; or**

b. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,

c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.

C. Delineation: Upon approval, a zone change shall be delineated on the Official Zoning Map by the Director. A zone change subject to specific conditions shall be annotated on the Official Zoning Map to indicate that such conditions are attached to the designation.

The landowner of the subject properties is requesting annexation into City limits. By its very nature, annexation of territory results in a change to the City limits boundary and the territory being annexed must be assigned to one or more zoning districts.

The Comprehensive Plan designates the subject properties as Industrial and within the SWIR overlay district. The territory will therefore be assigned to the SWIR zoning district and the Zoning Map will be updated to reflect this.

The SWIR Master Plan, approved by City Council via Resolution No. 2110 in 2017, demonstrates the purpose of the overlay zone and the need for land within it as well as conceptually illustrates the layout of public facilities as land is annexed and developed.

✓ The provisions are met.

Applicant Identity

<i>Applicant</i>	Peter Skei, Project Manager Specht Development Co.
<i>Applicant's Representative</i>	Lee Leighton, AICP, Planner IV Mackenzie
<i>Landowner(s)</i>	Weisz Family LLC

COUNCIL BILL NO. 3146

ORDINANCE NO. 2587

AN ORDINANCE DESIGNATING ZONING TO APPROXIMATELY 73.08 ACRES OF ANNEXED TERRITORY KNOWN AS THE WEISZ FAMILY PROPERTIES AS SOUTHWEST INDUSTRIAL RESERVE (SWIR) ZONING DISTRICT

WHEREAS, the subject properties are owned by Weisz Family LLC, and are legally described and mapped in Exhibit "A", which is affixed hereto and by this reference incorporated herein; and

WHEREAS, consistent with Oregon Revised Statutes (ORS) 222.111(2) the owner of real property in the territory to be annexed initiated by petition a proposal for annexation, a copy of the petition being on file with the City Recorder (ANX 2020-04); and

WHEREAS, because the subject properties are already within the Woodburn Urban Growth Boundary (UGB), they have an existing Comprehensive Plan map land use designation of Industrial and are within the Southwest Industrial Reserve (SWIR) overlay; and

WHEREAS, the landowner as applicant requested that, consistent with Woodburn Development Ordinance (WDO) 5.04.01E., the City designate the annexed territory as Southwest Industrial Reserve (SWIR), which is the one zoning district that is consistent with the Comprehensive Plan per Policy Table 1; and

WHEREAS, this zoning designation is contingent upon annexation of the subject property to the City of Woodburn, for which the applicant has petitioned and filed the petition with the City Recorder; and

WHEREAS, on January 14, 2021 the Woodburn Planning Commission considered the annexation application and, after a duly advertised public hearing, recommended approval of the annexation; and

WHEREAS, on February 22, 2021, the Woodburn City Council opened a public hearing and continued the hearing until date certain of March 8, 2021; and

WHEREAS, the Woodburn City Council continued the public hearing on March 8, 2021, reviewed the record, heard all public testimony presented on said application, and upon deliberation concluded that the proposed

annexation meets the applicable approval criteria under City of Woodburn Development Ordinance (WDO) 5.04.01C.; and

WHEREAS, the City Council agenda item cover memo mentioned that zoning designation follows annexation, compatibility of the SWIR district, and applicant acceptance of SWIR designation; **NOW, THEREFORE**,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Upon the effective date of the annexation enacted by Ordinance 2586 being considered contemporaneously with this request, the Woodburn Zoning Map is amended designating the zoning on the subject properties described and mapped in Exhibit "A" as Southwest Industrial Reserve (SWIR).

Approved as to form: _____
City Attorney Date

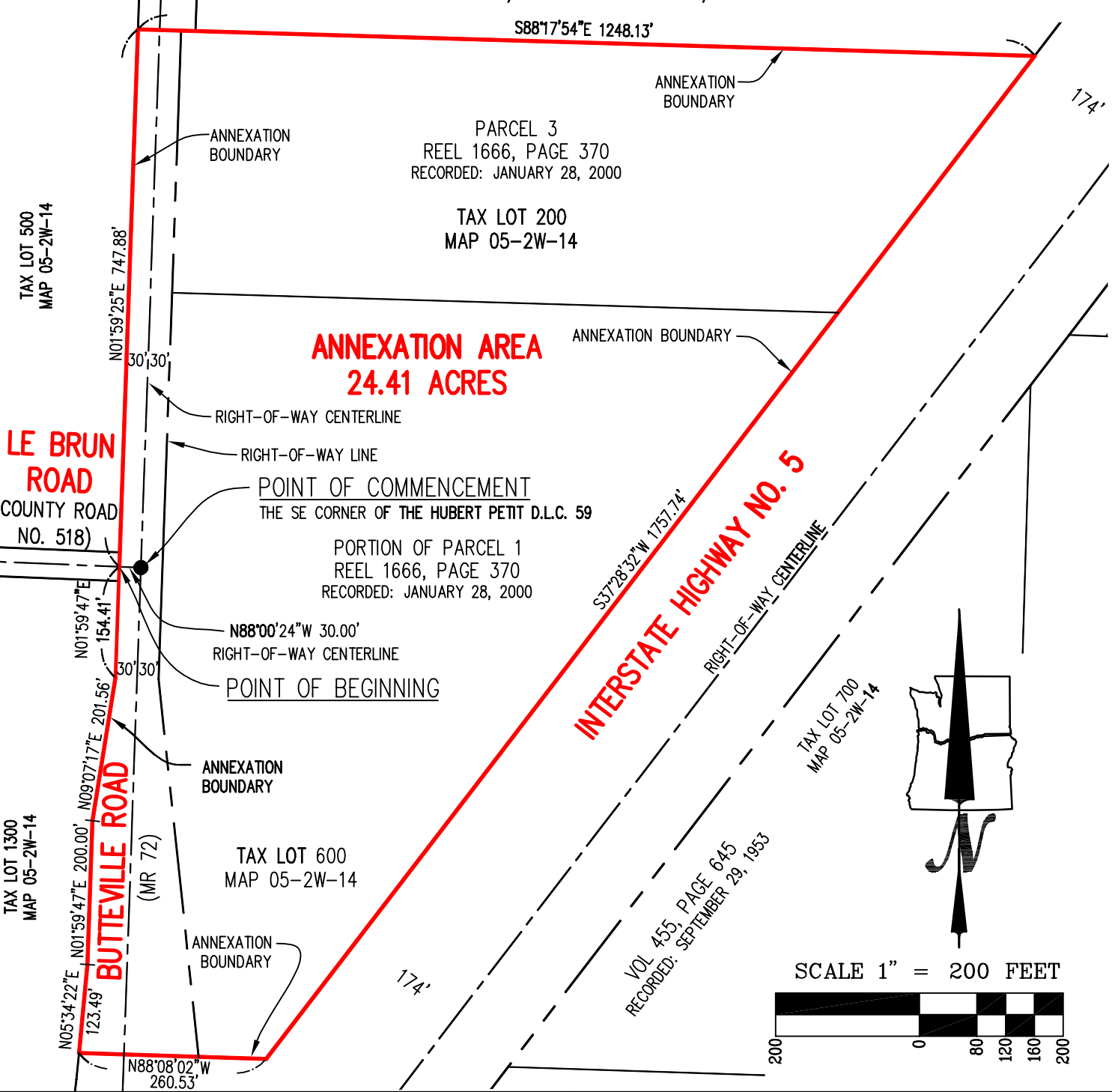
Approved: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

ANNEXATION EXHIBIT MAP

LOCATED IN THE NW AND SW 1/4 OF SECTION 13 AND THE NE AND SE 1/4 OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 2 WEST, W.M., CITY OF WOODBURN, MARION COUNTY, OREGON



PREPARED FOR:

SPECHT DEVELOPMENT INC.
10260 SW GREENBURG ROAD
SUITE 170
PORTLAND, OR 97223

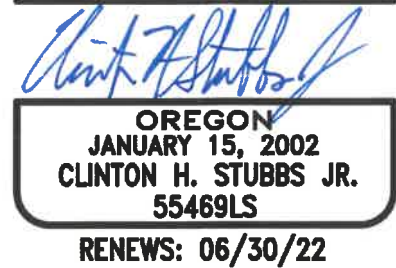
JOB NAME:	WOODBURN
JOB NUMBER:	1824
DRAWING NUMBER:	1824 ANNEX
DRAWN BY:	CDW
CHECKED BY:	CHS

NORTHWEST
SURVEYING, Inc.

1815 NW 169th PLACE,
SUITE 2090
BEAVERTON, OR 97006
PHONE: 503-848-2127
FAX: 503-848-2179
nwsurveying@nwsrvy.com



1815 NW 169th Place, Suite 2090
Beaverton, OR 97006
Telephone: 503-848-2127



Annexation Description Weisz Family LLC (West)

September 30, 2020
NWS Project Number 1824
Page 1 of 1

A tract of land located in the northeast one-quarter and southeast one-quarter of Section 14, Township 5 South, Range 2 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Commencing at the southeast corner of the Hubert Petit Donation Land Claim No. 59, said point being marked by a 3 inch brass disk in a monument case located at the centerline-centerline intersection of Butteville Road and Le Brun Road; Thence along the centerline of said Le Brun Road, North 88°00'24" West 30.00 feet to a point on the westerly right-of-way line of Butteville Road (30.00 feet westerly from the centerline thereof, when measured at right angles) and the Point of Beginning.

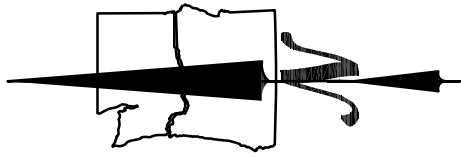
Thence along the westerly right-of-way line of said Butteville Road, North 01°59'25" East 747.88 feet to its intersection with the westerly extension of the south line of Lot 5 of "I-5 Logistics Center"; Thence departing the westerly right-of-way line of Butteville Road along said westerly extension and continuing along the southerly line of said Lot 5, South 88°17'54" East 1248.13 feet to the most southerly southeast corner thereof, said point being on the westerly right-of-way line of Interstate Highway No. 5 (174.00 feet westerly from the centerline thereof, when measured at right angles); Thence along the westerly right-of-way line of said Interstate Highway No. 5, South 37°28'32" West 1757.74 feet to its intersection with the southerly line of Parcel 1 described in a deed to Weisz Family LLC recorded on January 28, 2000 as Reel 1666, Page 370, Marion County Deed Records; Thence departing the westerly right-of-way line of Interstate Highway No. 5 along the southerly line of said Parcel 1 and continuing along the westerly extension thereof, North 88°08'02" West 260.53 feet to its intersection with the westerly right-of-way line of said Butteville Road (variable in width); Thence along the westerly right-of-way line of said Butteville Road the following four courses, North 05°34'22" East 123.49 feet; Thence North 01°59'47" East 200.00 feet; Thence North 09°07'17" East 201.56 feet; Thence North 01°59'47" East 154.41 feet to the Point of Beginning.

The above described tract of land contains 24.41 acres, more or less.

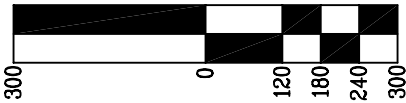
The basis of bearings for this description is the Oregon State Plane Coordinate System, North Zone, NAD 83.

ANNEXATION EXHIBIT MAP

LOCATED IN THE NW AND SW 1/4 OF SECTION 13 AND THE NE AND SE 1/4 OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 2 WEST, W.M., CITY OF WOODBURN, MARION COUNTY, OREGON



SCALE 1" = 300 FEET



EVERGREEN RD

REEL 3121, PAGE 50
RECORDED:
NOVEMBER 3, 2009

REEL 3121, PAGE 50
RECORDED:
NOVEMBER 3, 2009

REEL 3174,
PAGE 207
RECORDED:
APRIL 22, 2010

PARR ROAD NE

S02°15'41"W 1025.51'

S87°57'22"E
74.00'

POINT OF BEGINNING

"PARADISE POINTE"

S87°57'22"E 2036.55'

**ANNEXATION AREA
50.74 ACRES**

PARCEL 11
REEL 1666, PAGE 370
RECORDED: JANUARY 28, 2000

TAX LOT 800
MAP 05-2W-14

N87°57'22"W 2152.19'

PARCEL 12
REEL 1666, PAGE 370
RECORDED: JANUARY 28, 2000
TAX LOT 900
MAP 05-2W-14

TAX LOT 2000
MAP 05-2W-14
REEL 2803, PAGE 467
RECORDED: APRIL 26, 2007

ANNEXATION BOUNDARY

STACEY ALLISON WAY

REEL 3121, PAGE 97

RIGHT-OF-WAY CENTERLINE
RIGHT-OF-WAY LINE

**INTERSTATE
HIGHWAY NO. 5**

N37°28'32"E
88.14'

N01°42'33"E 953.70'

ANNEXATION BOUNDARY

PARCEL 5
REEL 1666, PAGE 370
RECORDED:
JANUARY 28, 2000
TAX LOT 1000
MAP 05-2W-14

TAX LOT 700
MAP 05-2W-14

VOL 455, PAGE 645
RECORDED:
SEPTEMBER 29, 1953

PREPARED FOR:

SPECHT DEVELOPMENT INC.
10260 SW GREENBURG ROAD
SUITE 170
PORTLAND, OR 97223

JOB NAME:	WOODBURN
JOB NUMBER:	1824
DRAWING NUMBER:	1824 ANNEX
DRAWN BY:	CDW
CHECKED BY:	CHS

**NORTHWEST
SURVEYING, Inc.**

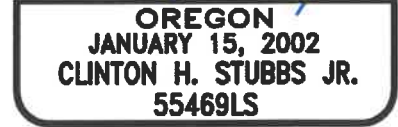
1815 NW 169th PLACE,
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PHONE: 503-848-2127
FAX: 503-848-2179
nwsurveying@nwsrvy.com



1815 NW 169th Place, Suite 2090
Beaverton, OR 97006
Telephone: 503-848-2127



Clinton H. Stubbs Jr.



RENEWS: 06/30/22

Annexation Description
Weisz Family LLC (East)
September 30, 2020
NWS Project Number 1824
Page 1 of 1

A tract of land located in the northwest and southwest one-quarter of Section 13 and the northeast and southeast one-quarter of Section 14, Township 5 South, Range 2 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at a 5/8 inch iron rod with a yellow plastic cap stamped "Wilhelm ENG OR LS 2413", Located at the southeast corner of Lot 36 of "Paradise Pointe", said point also being on the north line of that property described as Parcel 11 in a deed to Weisz Family LLC Recorded on January 28, 2000 as Reel 1666, Page 370, Marion County Deed Records; Thence along the southerly line of said Paradise Pointe, South 87°57'22" East 74.00 feet to the southeast corner thereof, said point being on the westerly line of that property described in a deed to George Cherepanov recorded on November 3, 2009 in Reel 3121, Page 50, Marion County Deed Records; Thence along the westerly line of said Cherepanov property and continuing along the southerly extension thereof, South 02°15'41" West 1025.51 feet to an angle point on the centerline of Parr Road NE; Thence along the easterly extension of the northerly line of that property described as Parcel 12 in said Weisz Family LLC deed, and continuing along the northerly line of Parcel 12 and Parcel 5 of said deed, North 87°57'22" West 2152.19 feet to a point on the easterly line of that property described in a deed to the State of Oregon recorded on September 29, 1953 in volume 455, page 645, Marion County Deed Records; Thence along the easterly line of said State of Oregon property, North 01°42'33" East 953.70 feet to a point on the southeasterly right-of-way line of Interstate Highway No. 5 (100.00 feet southeasterly of the centerline thereof, when measured at right angles); Thence along the southeasterly right-of-way line of said Interstate Highway No. 5, North 37°28'32" East 88.14 feet to the southwest corner of that property described in a deed to the City of Woodburn recorded on November 30, 2009 in Reel 3127, Page 97, Marion County Deed Records, said point also being the most northerly northwest corner of said Parcel 11; Thence along the northerly line of said Parcel 11, South 87°57'22" East 2036.55 feet to the Point of Beginning.

The above described tract of land contains 50.74 acres, more or less.

The basis of bearings for this description is the Oregon State Plane Coordinate System, North Zone, NAD 83.

COUNCIL BILL NO. 3147

RESOLUTION NO. 2167

A RESOLUTION APPROVING TRANSFERS OF FY 2020-2021 APPROPRIATIONS AND APPROVING A SUPPLEMENTAL BUDGET

WHEREAS, ORS 294.463(1) permits “transfers of appropriations” within any fund “when authorized by official resolution or ordinance of the governing body”; and

WHEREAS, ORS 294.463(2) limits “transfers of general operating contingency appropriations to no more than fifteen (15) percent of the total appropriations of the fund” unless adopted pursuant to a supplemental budget; and

WHEREAS, transfers made pursuant to any of the above must state the need for the transfer, the purpose for the authorized expenditure, and the amount of the appropriation transferred; and

WHEREAS, ORS 294.471(1)(a) permits supplemental budgets when “an occurrence of condition which had not been ascertained at the time of the preparation of a budget for the current year or current budget period which requires a change in financial planning”; and

WHEREAS, ORS 294.473 requires the governing body to hold a public hearing on the supplemental budget when the estimated expenditures contained in the supplemental budget for fiscal year or budget period differ by ten (10) percent or more of any one of the individual funds contained in the regular budget for that fiscal year; and

WHEREAS, the transfers contained herein are made pursuant to ORS 294.463; and

WHEREAS, the supplemental budget contained herein is made pursuant to ORS 294.471; and

WHEREAS, a public hearing was held March 22, 2021 on the supplemental budget changes, **NOW, THEREFORE**,

THE CITY OF WOODBURN RESOLVES AS FOLLOWS:

Section 1. That pursuant to the applicable ORS provisions cited above, the City Council hereby approves the transfers of appropriations and supplemental budget for FY 2020-21 in the amounts shown below for the purposes of funding the CDBG, Cares Act Emergency Rental Assistance Funds.

SUMMARY OF PROPOSED BUDGET CHANGES							
AMOUNTS SHOWN ARE REVISED TOTALS IN THOSE FUNDS BEING MODIFIED							
General Fund 001							
Resource	Original	Change	Revised	Requirement	Original	Change	Revised
1 Revenue	18,969,220	450,000	19,419,220	Operating Expenses	18,969,220	450,000	19,419,220
2							
Revised Total Fund Resources			19,419,220	Revised Total Fund Requirements			19,419,220
<i>Comments: Federal Grant allocated to rental assistance & Business Oregon Grant Funds.</i>							

Approved as to Form: _____
City Attorney _____ Date _____

APPROVED: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon



Agenda Item

March 22, 2021

TO: Honorable Mayor and City Council
FROM: Scott C. Derickson, City Administrator
SUBJECT: **City Council Support of SB 784**

RECOMMENDATION:

Consider making a motion for the City Council to support SB 784.

BACKGROUND/DISCUSSION:

Over the weekend, I was approached by PGE asking that the City Council support SB 784, a bill currently before the Oregon Legislature. Because it is time sensitive and the Mayor and Council President have agreed, this matter was added to the March 22 Council meeting agenda.

Some key points of SB 784 are as follows:

- Beyond PGE's new climate goals, local governments that choose to move faster should be able to collaborate with PGE on an accelerated program to meet their goals.
- Many local governments in PGE's service territory have local climate action and sustainability plans, some of which include 100% clean and renewable community-wide electricity goals.
- SB 784 (Sections 3 & 4) enables local governments, if they choose, to work with their utility on program design to meet their clean electricity goals and provides clear authority to the Public Utility Commission (PUC) to approve the program that results from the collaborative process.
- SB 784 will:
 - Allow local governments to choose small and community owned resources if they wish.
 - Allow consideration of non-energy benefits like resiliency, water savings, species protection, or local economic development.
 - Allow both utility and non-utility ownership of energy resources.

Agenda Item Review: City Administrator ___x___ City Attorney ___x___ Finance ___x___

Honorable Mayor and City Council

March 22, 2021

Page 2

-
- Protect low-income customers in participating communities
 - Minimize cost shifts to non-participating customers

It is my understanding that a PGE representative will be in attendance at the meeting.

FINANCIAL IMPACT:

None.

Attachments:

Email from Wendy Veliz, PGE dated March 18, 2021
Customer Supported Renewable Program Flyers
Senate Bill 784

Heather M. Pierson

Subject: FW: Asking for support for SB 784 Bill to help cities meet their climate/energy goals by Mon. Mar. 22

Begin forwarded message:

From: Wendy Veliz <Wendy.Veliz@pgn.com>
Date: March 18, 2021 at 8:50:27 AM PDT
To: Scott Derickson <Scott.Derickson@ci.woodburn.or.us>
Subject: Asking for support for SB 784 Bill to help cities meet their climate/energy goals by Mon. Mar. 22

**** This email is from an EXTERNAL sender. Exercise caution when opening attachments or click links from unknown senders or unexpected email. ****

Scott,

I wanted to pass this along and ask for the City of Woodburn support of SB 784 Sections 3 and 4. This would support the city's sustainability and/or climate action goals. Apologies for the quick turnaround but the legislature is moving quickly and we need an indication of support by Mon. Mar. 22. Specifically, we're asking for logo to sign onto the SB 784 letter that I have attached. Currently, Beaverton and Hillsboro have signed onto to support.

Background:

There is a bill we have in the legislature (SB 784) that is based on cities who want to move at their own pace to increase their use of clean energy to meet their climate and/or sustainability goals. PGE is doing a lot to incorporate more renewables into our mix and reduce the carbon footprint of our power supply, but some cities want to move even more quickly get to 100% renewable. PGE wants to help them and this bill would allow that. The first attachment "Green Tariff for Local Government" provides a summary. The opportunity here is for cities to provide their logos and "sign on to" the letter (see the second attachment) to show the legislature they support this bill. We'd need that by Monday if this is of interest.

Here is a summary:

- Beyond PGE's new climate goals, local governments that choose to move faster should be able to collaborate with PGE on an accelerated program to meet their goals.
- Many local governments in PGE's service territory have local climate action and sustainability plans, some of which include 100% clean and renewable community-wide electricity goals.
- SB 784 (Sections 3 & 4) enables local governments, if they choose, to work with their utility on program design to meet their clean electricity goals and provides clear authority to the Public Utility Commission (PUC) to approve the program that results from the collaborative process.
- SB 784 will:
 - Allow local governments to choose small and community owned resources if they wish.
 - Allow consideration of non-energy benefits like resiliency, water savings, species protection, or local economic development.
 - Allow both utility and non-utility ownership of energy resources.
 - Protect low-income customers in participating communities
 - Minimize cost shifts to non-participating customers

This is some additional information that might be helpful.

- Here is the bill text (Sections 3-4 are what we're talking about here): [SB0784 \(oregonlegislature.gov\)](#)
- Here is testimony from the mayors of Milwaukie and Beaverton [SB 784 Hearing Mayor Testimony - YouTube](#) at a recent hearing.

Thank you and please let me know if you have any questions.

Thank you,
Wendy

Wendy Veliz

Hablo español

Local Government Affairs Manager | 503-929-8304

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An Oregon kind of energy. Energía al estilo de Oregón.

Partnering with customers on the clean energy future: Customer Supported Renewable Program (SB 784 Section 3, 4)

Communities expect affordable, reliable and equitable clean electricity. PGE shares our customers' and our communities' vision for this future.

In 2019, PGE began collaborating with local governments to understand their climate action goals, needs and values.

This year, we will continue this collaborative process and expand the conversation to our broader community, particularly BIPOC and other under-represented communities.

SB 784 (Sections 3 & 4) enables local governments that choose to do so to collaborate with their utility on program design and provides clear authority to the Public Utility Commission (PUC) to approve the program that results from the collaborative process.

Key provisions include:

- For the PUC to approve, the **local government must adopt an ordinance or resolution** that:
 - Requires the community to be served with **renewable or non-emitting resources**.
 - Identifies the role of **community-based and/or resiliency projects** if the local government would like to include such projects.
 - Requires **protections for low-income customers**.
- The program must **minimize cost-shifting** to non-participating utility customers.
- Allows the utility to potentially construct and/or purchase the output from renewable or non-emitting resources to meet the communities need and to recover the costs of such facilities from participating customers within the boundary of the local government with PUC oversight.

A Fall 2020 residential customer survey in Milwaukie, Beaverton, Portland and Multnomah County confirmed broad support for a communitywide customer supported renewable program.

- About 80% of respondents felt that their local government's goal of 100% clean and renewable electricity by either 2030 or 2035 was either **about right or too slow**.
- An equivalent share of respondents indicated **interest in a utility program to meet those clean and renewable electricity goals**.
- Respondents most strongly supported the project values of **helping protect the environment for future generations AND availability to all residents and small businesses** in the city, including low and fixed-income residents.

Please join us and support customer supported renewables in SB 784!

Contact: Brooke Brownlee, 503.509.7321, brooke.brownlee@pgn.com
Sunny Radcliffe, 503.869.5320, sania.radcliffe@pgn.com



Empowering Communities to Reach their Clean Energy Goals: Customer Supported Renewable Program (SB 784 Section 3, 4)

Cities and counties across Oregon are ready for clean electricity: Many local governments in Oregon have climate action and sustainability plans, and others are in the process of adopting them. As an example, five cities in PGE service territory have climate action plans that include 100% clean and renewable community-wide electricity goals in the 2030-2035 range.

Local governments that choose to decarbonize faster should be able to collaborate with their utility on an accelerated program to meet their goals: SB 784 (Sections 3 & 4) enables local governments to collaborate with their utility on program design and provides clear authority to the Public Utility Commission (PUC) to approve the resulting program.

How it works:

- First, the **local government collaborates with its community and the utility** to design the program.
- Next, the **local government adopts an ordinance or resolution** that:
 - Requires the community to be served with **renewable or non-emitting resources** including any specified procurement criteria.
 - Identifies the role of **community-based and/or resiliency projects** if the local government would like to include such projects.
- The **utility files the proposed program with the Oregon PUC for approval** in line with the collaborative process and local government's adopted ordinance or resolution.
- Once approved, the **utility will place participants into the program and procure resources** according to the adopted program and local government ordinance.

SB 784 will:

- Allow local governments to **choose small and community owned resources**.
- Allow consideration of non-energy benefits like **resiliency, water savings, species protection, or local economic development**.
- Allow both **utility and non-utility ownership** of energy resources.
- **Protect low-income customers** in participating communities
- **Minimize cost shifts** to non-participating customers

Please join us in supporting the customer supported renewable program in SB 784 to help Oregon's local governments reach their climate action goals

LOGOS

Senate Bill 784

Sponsored by Senator BEYER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes public utility to seek rate recovery for operating expenses and capital costs associated with resiliency measures.

Authorizes electric company to include as part of portfolio of rate options, program of rates or charges reflecting costs of serving retail electricity consumers within boundaries of local governments with electricity derived from renewable energy sources or paired with unbundled renewable energy certificates.

Requires Public Utility Commission to allow recovery of certain social and environmental costs from retail electricity consumers receiving electricity from electricity service suppliers.

Modifies certain laws related to competitive retail market for electricity.

Requires responsible contractor labor standards for large-scale renewable energy generation or storage facilities.

A BILL FOR AN ACT

Relating to energy; creating new provisions; and amending ORS 469A.005, 469A.205, 757.247, 757.603, 757.607, 757.646, 757.649 and 757.659.

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

RESILIENCY

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 757.

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

(a) "Emergency" includes:

(A) Naturally caused and intentionally and unintentionally human-caused disruptions to the provision of utility service, where the disruptions are serious, unexpected and require immediate response; and

(B) Events specified in ORS 401.025.

(b) "Resiliency measure" means equipment or programs utilized by a public utility on the utility's generation, transmission or distribution system, or by the utility or a customer of the utility on the customer's side of the utility's metering infrastructure, that is intended to:

(A) Provide an increased ability of the utility system to withstand and recover from a major disruption in delivery or transmission of electricity, including a major disruption from an emergency;

(B) Prepare for or adapt to changing conditions, or anticipated changed conditions, associated with effects of climate change or other, similar, landscape level environmental changes, including assumed land use changes;

(C) Provide utility customers and their communities with limited or temporary utility service in the event of an emergency; or

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (D) Reduce the magnitude and duration of a potentially disruptive emergency.

2 (c) “Retail electricity consumer” has the meaning given that term in ORS 757.600.

3 (2) A public utility may seek rate recovery for operating expenses and capital costs as-
 4 sociated with a resiliency measure from all retail electricity consumers of the public utility
 5 through a filing under ORS 757.210 to 757.220. The Public Utility Commission may allow rate
 6 recovery for resiliency measures that, at a minimum:

7 (a) Increase the ability of a public facility or public service that is critically essential to
 8 the public welfare, including but not limited to a fire station, public safety location, municipal
 9 water facility or community-identified emergency assembly and gathering location, to con-
 10 tinue to operate at some capacity during a loss of grid-supplied electricity in an emergency;

11 (b) Provide distribution system efficiencies and grid services, such as flexible load pro-
 12 grams, demand management programs or dispatchable standby capacity, that operate both
 13 to serve customers during normal service and can be used to assist utility operations or
 14 provide utility service during emergencies;

15 (c) Provide electricity or other utility service during emergencies in microgrids or at
 16 centrally located community facilities, including solar photovoltaic energy systems coupled
 17 with storage or smart inverters;

18 (d) Modify existing programs designed to improve utility reliability, such as tree trim-
 19 ming or pole replacement, in certain areas of the utility service territory that may be more
 20 likely subject to fire or other emergencies;

21 (e) Involve different business models including utility, customer or joint ownership and
 22 leasing; or

23 (f) Seek to address the needs of potentially affected communities, including low-income
 24 customers, or investments that incorporate social equity and energy burden concerns.

25 (3) For purposes of implementing this section:

26 (a) Notwithstanding ORS 757.355, a resiliency measure provides utility service to cus-
 27 tomers of a public utility if the resiliency measure is capable of providing the service for
 28 which it was designed during an emergency.

29 (b) In determining the prudence of an investment in a resiliency measure, the commis-
 30 sion shall consider, among other things:

31 (A) The cost to customers of the resiliency measure;

32 (B) The probability and potential impact of the risk to be addressed;

33 (C) Whether the investment is supported by a prioritized risk mitigation assessment; and

34 (D) Whether the resiliency measure provides benefits directly to customers and to the
 35 electricity grid generally.

36 (c) If the commission authorizes a public utility to recover costs from customers for in-
 37 vestments in resiliency measures, the resiliency measures must, regardless of ownership of
 38 the resiliency measure and pursuant to agreement with the customer, allow the utility to
 39 manage the measure for grid and emergency services.

40
 41 **GREEN TARIFFS FOR LOCAL GOVERNMENTS**

42
 43 **SECTION 3.** ORS 757.603 is amended to read:

44 757.603. (1)(a) *Except as provided in this subsection,* An electric company shall provide all retail
 45 electricity consumers that are connected to the electric company’s distribution system with a regu-

1 lated, cost-of-service rate option.

2 [(b)] **(2)(a)** The Public Utility Commission by order may waive the requirement [of *paragraph (a)*
3 *of this subsection*] **in subsection (1) of this section** for any retail electricity consumer other than
4 residential electricity consumers and small commercial electricity consumers.

5 **(b)** [Before] **Prior to** ordering a waiver under this [*paragraph*] **subsection**, the commission
6 [shall] **may** conduct such studies as the commission deems necessary and **shall** provide notice and
7 opportunity for public comment and hearings **regarding the waiver**.

8 **(c)** The commission may order a waiver under this [*paragraph*] **subsection** if the commission
9 finds, based on [*an*] **the** evidentiary record developed through **the conducted studies**, public com-
10 ment and hearings, that a market exists in which retail electricity consumers subject to the waiver
11 are able to:

12 **(A)** Purchase supplies of electricity adequate to meet the needs of the retail electricity con-
13 sumers;

14 **(B)** Obtain multiple offers for electricity supplies within a reasonable period of time;

15 **(C)** Obtain reliable supplies of electricity; and

16 **(D)** Purchase electricity at prices that are not unduly volatile and that are just and reasonable.

17 [(2)] **(3)** Each electric company shall provide each [*residential*] **retail** electricity consumer that
18 is connected to its distribution system **and whose electricity demand at any point of delivery is**
19 **less than 30 kilowatts** a portfolio of rate options. The portfolio **of rate options** shall include at
20 least the following options:

21 **(a)** A rate that reflects significant new renewable energy resources;

22 **(b)** A market-based rate; and

23 **(c)** If the commission finds, through public comment and hearing or through market research
24 conducted by the electric company, that demand is sufficient to justify the rate, a rate option for
25 electricity associated with a specific renewable energy resource, including solar photovoltaic en-
26 ergy.

27 [(3)(a)] **(4)** The commission shall regulate the cost-of-service rate [*option under subsection (1) of*
28 *this section and the portfolio of rate options under subsection (2) of this section*] **and portfolio of rate**
29 **options under this section**. The commission:

30 **(a)** Shall reasonably ensure that the costs and risks of serving each option are reflected in the
31 rates for each option, **where such rates may include a monthly flat rate or charge in addition**
32 **to usage**.

33 **(b)** [*The commission*] May prohibit or otherwise limit the use of a cost-of-service rate by retail
34 electricity consumers who have been served through direct access[, *and*].

35 **(c)** May limit switching among **the portfolio of rate options** and the cost-of-service rate [*by*
36 *residential electricity consumers*].

37 **(5)(a)** **As used in this subsection, “local government” means a city or county.**

38 **(b)** **An electric company may include, as part of the portfolio of rate options required by**
39 **subsection (3) of this section and if agreed to in coordination with one or more local gov-**
40 **ernments to meet adopted renewable and nonemitting energy goals, a program of rates or**
41 **charges that reflect the cost of an electric company program to serve retail electricity con-**
42 **sumers within the boundaries of those local governments with electricity:**

43 **(A)** **Partially or completely derived from new or existing renewable energy resources or**
44 **nonemitting energy resources, including supply and demand-side resources; or**

45 **(B)** **Paired with unbundled renewable energy certificates, as defined in ORS 469A.005,**

1 from new or existing renewable energy resources.

2 (c) The commission may approve a rate or charge under this subsection if:

3 (A) The electric company and local government attest that the coordination required
4 under paragraph (b) of this subsection occurred;

5 (B) The local government enacts or adopts an ordinance, charter provision, resolution
6 or other regulation requiring that the population of the local government must, as deter-
7 mined during the coordination required by paragraph (b) of this subsection and conducted in
8 accordance with this paragraph, be served with renewable energy resources or nonemitting
9 energy resources including, at the option of the local government:

10 (i) Energy from community-based renewable energy projects that are capable of providing
11 community energy resiliency benefits, such as storage systems, microgrids, in-pipe hydro-
12 electric or micro-hydroelectric; or

13 (ii) Energy from renewable energy resources that also provide community cobenefits as
14 determined by the local government, such as community stability, water savings, species
15 protection, direct cost savings or local economic development;

16 (C) The ordinance, charter provision, resolution or other regulation specifies that all el-
17 igible retail electricity consumers served within the local government boundary:

18 (i) Are automatically placed on the rate schedule but have an opportunity to decline to
19 be served by the rate option; or

20 (ii) Must opt-in to participate in the program of rates or charges adopted pursuant to this
21 subsection;

22 (D) The ordinance, charter provision, resolution or other regulation includes protections,
23 such as subsidies or bill payment assistance, for low-income retail electricity consumers af-
24 fected by the rates or charges and provides that these protections are paid for solely by re-
25 tail electricity consumers within the boundaries of the local government;

26 (E) The electric company has included in the program provisions to minimize the shifting
27 of costs from retail electricity consumers to other customers who do not participate;

28 (F) The ordinance, charter provision, resolution or other regulation sets forth the dura-
29 tion of the program; and

30 (G) The electric company utilizes commission-approved procurement processes, to the
31 extent those processes apply, to acquire resources that serve the program.

32 (d) After the electric company begins service to retail electricity consumers within the
33 boundaries of the local government according to the program of rates or charges adopted
34 pursuant to this subsection, the electric company must:

35 (A) Include information on its monthly bills to participating retail electricity consumers
36 identifying the program's cost; and

37 (B) Provide notice to participating retail electricity consumers of any change in rate for
38 participation in the program.

39 (e) The commission shall allow the electric company, for purposes of the new or existing
40 renewable energy resources or nonemitting energy resources that serve the program of rates
41 or charges adopted pursuant to this subsection:

42 (A) To own the facilities or use power purchase agreements and, if the electric company
43 uses long-term power purchase agreements, to earn an annual incentive that is no less than
44 the product of the authorized cost of debt multiplied by the operating expense of the electric
45 company under the agreement and no more than the product of the authorized rate of return

1 on equity multiplied by the operating expense.

2 (B) To recover part or all of the costs associated with the resources that serve the pro-
3 gram, including costs associated with resources described in subparagraph (A) of this para-
4 graph, from all retail electricity consumers, if:

5 (i) The electric company can demonstrate that above-market costs of those resources
6 have been paid for by program participants;

7 (ii) An integrated resource plan conducted by the electric company shows an energy or
8 capacity need that will be met on a least-cost, least-risk basis with those resources;

9 (iii) The electric company will use the resources to meet a renewable portfolio standard
10 imposed by ORS 469A.052 on a least-cost, least-risk basis; or

11 (iv) All customers will otherwise benefit from inclusion of the costs in rates collected
12 from all customers.

13 (C) To collect moneys from participating retail electricity consumers in excess of the cost
14 of service and defer revenues or costs associated with the program for the purposes of
15 making future investments in resources or renewable energy certificates to serve program
16 participants and for the purposes of protecting nonparticipating retail electricity consumers
17 should the local government end its participation in the program.

18 (D) To recover the costs associated with the resources that serve the program, including
19 costs associated with resources described in subparagraph (A) of this paragraph, from retail
20 electricity consumers within the boundaries of the local government, if the local government
21 ends its participation in the program and the costs are not otherwise recoverable under
22 subparagraph (B) of this paragraph.

23 (6) Nothing in subsection (3) of this section prohibits an electric company from providing
24 retail electricity consumers that are connected to its distribution system and whose elec-
25 tricity demand at any point of delivery is greater than 30 kilowatts a portfolio of rate options.

26 **SECTION 4.** ORS 469A.005 is amended to read:

27 469A.005. As used in ORS 469A.005 to 469A.210:

28 (1) "Acquires service territory" does not include an acquisition by a city of a facility, plant,
29 equipment or service territory within the boundaries of the city, pursuant to ORS 225.020 or city
30 charter, if the city:

31 (a) Already owns, controls or operates an electric light and power system for supplying elec-
32 tricity to the inhabitants of the city and for general municipal purposes;

33 (b) Provides fair, just and reasonable compensation to the electric company whose service ter-
34 ritory is acquired that:

35 (A) Gives consideration for the service territory rights and the cost of the facility, plant or
36 equipment acquired and for depreciation, fair market value, reproduction cost and any other rele-
37 vant factor; and

38 (B) Is based on the present value of the service territory rights and the facility, plant and
39 equipment acquired, including the value of poles, wires, transformers and similar and related appli-
40 ances necessarily required to provide electric service; and

41 (c) Pays any stranded costs obligation established pursuant to ORS 757.483.

42 (2) "Banked renewable energy certificate" means a bundled or unbundled renewable energy
43 certificate that is not used by an electric utility or electricity service supplier to comply with a
44 renewable portfolio standard in a calendar year, and that is carried forward for the purpose of
45 compliance with a renewable portfolio standard in a subsequent year.

1 (3) “BPA electricity” means electricity provided by the Bonneville Power Administration, in-
 2 cluding electricity generated by the Federal Columbia River Power System hydroelectric projects
 3 and electricity acquired by the Bonneville Power Administration by contract.

4 (4) “Bundled renewable energy certificate” means a renewable energy certificate for qualifying
 5 electricity that is acquired:

6 (a) By an electric utility or electricity service supplier by a trade, purchase or other transfer
 7 of electricity that includes the renewable energy certificate that was issued for the electricity; or

8 (b) By an electric utility by generation of the electricity for which the renewable energy cer-
 9 tificate was issued.

10 (5) “Compliance year” means the calendar year for which the electric utility or electricity ser-
 11 vice supplier seeks to establish compliance with the renewable portfolio standard applicable to the
 12 electric utility or electricity service supplier in the compliance report submitted under ORS
 13 469A.170.

14 (6) “Consumer-owned utility” means a municipal electric utility, a people’s utility district or-
 15 ganized under ORS chapter 261 that sells electricity or an electric cooperative organized under ORS
 16 chapter 62.

17 (7) “Distribution utility” has the meaning given that term in ORS 757.600.

18 (8) “Electric company” has the meaning given that term in ORS 757.600.

19 (9) “Electric utility” has the meaning given that term in ORS 757.600.

20 (10) “Electricity service supplier” has the meaning given that term in ORS 757.600.

21 (11) “Qualifying electricity” means electricity described in ORS 469A.010.

22 (12) “Renewable energy source” means a source of electricity described in ORS 469A.025.

23 (13) “Retail electricity consumer” means a retail electricity consumer, as defined in ORS
 24 757.600, that is located in Oregon.

25 (14) “Unbundled renewable energy certificate” means:

26 (a) A renewable energy certificate for qualifying electricity that is acquired by an electric
 27 utility or electricity service supplier by trade, purchase or other transfer without acquiring the
 28 electricity that is associated with the renewable energy certificate; **or**

29 **(b) A renewable energy certificate that is sold to a retail electricity consumer without**
 30 **selling, on a non-cost of service basis, the electricity associated with the renewable energy**
 31 **certificate to the retail electricity consumer.**

32 33 **NONBYPASSABILITY OF SOCIAL AND ENVIRONMENTAL COSTS**

34
35 **SECTION 5.** ORS 757.607 is amended to read:

36 757.607. (1) The Public Utility Commission shall ensure that direct access programs offered by
 37 electric companies meet the following conditions:

38 [(1)] (a) The provision of direct access to some retail electricity consumers must not cause the
 39 unwarranted shifting of costs to other retail electricity consumers of the electric company. The
 40 commission may, in establishing any rates and charges under ORS 757.600 to 757.667, consider and
 41 mitigate the rate impact on consumers from the reduction or elimination of subsidies in existing rate
 42 structures.

43 [(2)] (b) The direct access, portfolio of rate options and cost-of-service rates may include tran-
 44 sition charges or transition credits that reasonably balance the interests of retail electricity con-
 45 sumers and utility investors. The commission may determine that full or partial recovery of the costs

1 of uneconomic utility investments, or full or partial pass-through of the benefits of economic utility
2 investments to retail electricity consumers, is in the public interest.

3 [(3)] (2) The commission shall allow recovery[.];

4 (a) Through a transition charge, of any otherwise unrecoverable costs arising from or related
5 to an electric company's contractual or other legal obligations to the Bonneville Power Adminis-
6 tration under ORS 757.663, or arising from or related to a failure of the Bonneville Power Adminis-
7 tration to meet its contractual or other legal obligations to the electric company, from those
8 classes of consumers for which electric power was purchased from the Bonneville Power Adminis-
9 tration.

10 (b) **Through a charge, on retail electricity consumers receiving electricity from electric-**
11 **ity service suppliers, of costs tied to the economic, environmental, social or equity programs**
12 **and policies that are imposed on electric companies by state and federal law, regulation and**
13 **order, including costs associated with attaining the state's greenhouse gas emissions re-**
14 **duction goals specified in ORS 468A.205, that those retail electricity consumers may avoid**
15 **by obtaining electric power through direct access. A charge authorized under this paragraph:**

16 (A) **Must be calculated on the basis of electricity consumption and bear a direct re-**
17 **lationship to costs borne by retail electricity consumers served by the electric company; and**

18 (B) **May include above-market costs associated with investments by an electric company**
19 **in qualifying electricity, as described in ORS 469A.010, or in other greenhouse gas**
20 **emissions-free electricity used to serve the electric company's retail electricity consumers.**

21 [(4)] (3) Notwithstanding ORS 757.355, the commission may allow a return on the unamortized
22 balance of an uneconomic utility investment or an economic utility investment that is included in
23 rates.

24 **ELECTRIC POWER RESTRUCTURING MODERNIZATION**

25 **SECTION 6.** ORS 757.646 is amended to read:

26 757.646. (1) The duties, functions and powers of the Public Utility Commission shall include de-
27 veloping policies to eliminate barriers to the development of a competitive retail market [*structure*]
28 **between electricity service suppliers and electric companies.** The policies shall be designed to
29 [*mitigate the vertical and horizontal market power of incumbent electric companies,*] prohibit prefer-
30 ential treatment, or the appearance of such treatment, **by the incumbent electric companies to-**
31 **ward** [*of*] generation or market affiliates [*and determine the electricity services likely to be*
32 *competitive*]. The commission may require an electric company acting as an electricity service sup-
33 plier do so through an affiliate.

34 (2) The commission shall establish by rule a code of conduct for electric companies and their
35 affiliates to protect against market abuses and anticompetitive practices. The code shall, at a mini-
36 mum:

37 (a) Require an electric company and any affiliate that shares the same name and logo to disclose
38 to all consumers the relationship between the company and affiliate and to clarify that the affiliate
39 is not the same as the electric company and that in order to receive service from the company a
40 consumer does not have to purchase the services of the affiliate;

41 (b) Prohibit preferential access by an electric company affiliate to confidential consumer infor-
42 mation;

43 (c) [*Prohibit*] **Minimize** cross-subsidization between competitive operations and regulated oper-
44 ations.

1 ations, including the use of electric company personnel and other resources;

2 (d) Prohibit joint marketing activities and exclusive referral arrangements between an electric
3 company and its affiliates;

4 (e) Provide the commission with all necessary access to books and records;

5 (f) Require electric companies to make regular compliance filings; and

6 (g) Require fair treatment of all competitors by a distribution utility.

7 (3) An electric company shall provide the commission access to all books and records necessary
8 for the commission to monitor the electric company and its affiliate relationships. The commission
9 shall require an electric company biannually to file a report detailing compliance with this sub-
10 section.

11 **SECTION 7.** ORS 757.649 is amended to read:

12 757.649. (1)(a) A person or other entity shall not act as an electricity service supplier unless the
13 person or entity is certified by the Public Utility Commission. The commission, by rule, shall es-
14 tablish standards for certification of persons or other entities as electricity service suppliers in this
15 state. The rules shall, at a minimum, address:

16 (A) The ability of the person or entity to meet the person's or entity's obligation to provide
17 electricity services pursuant to direct access; and

18 (B) The ability of the person or entity to comply with applicable consumer protection laws.

19 (b) The commission may require an electricity service supplier to provide a bond or other se-
20 curity.

21 (c) The commission may establish a fee, not to exceed \$500, for initial certification and annual
22 recertification of electricity service suppliers.

23 (d) The commission, at any time, may revoke an electricity service supplier's certification for
24 failure to comply with applicable statutes and rules.

25 (e) The commission may require an electricity service supplier to provide information necessary
26 to ensure compliance with ORS 757.612. The commission shall ensure the privacy of all information
27 and the protection of any proprietary information provided.

28 (2) Every electric utility shall maintain the integrity of its transmission facilities and distrib-
29 ution system and provide safe, reliable service to all retail electricity consumers. Nothing in ORS
30 757.600 to 757.667 or 757.669 to 757.687 shall reduce or diminish the statutory or contractual obli-
31 gations of electric utilities to maintain the safety and reliability of their transmission facilities and
32 distribution system and other infrastructure and equipment used to deliver electricity.

33 (3) The commission for electric companies, or the governing body for other electric utilities,
34 shall adopt rules, ordinances, policies and service quality standards designed to maintain a reliable,
35 safe and efficient distribution system. The commission shall regulate electrical safety regarding
36 generation, transmission, substation and distribution facilities for electric utilities and other elec-
37 trical system owners and operators as provided under ORS 757.035.

38 (4)(a) Every bill to a direct access retail electricity consumer from an electricity service sup-
39 plier shall contain at least:

40 [(a)] (A) The rate and amount due for each service or product that the retail electricity con-
41 sumer is purchasing and other price information necessary to facilitate direct access, as determined
42 by the commission;

43 [(b)] (B) The rates and amounts of state and local taxes or fees, if any, imposed on the retail
44 electricity consumer;

45 [(c)] (C) The amount of any public purpose charge or credit;

1 [(d)] **(D)** The amount of any transition charge or transition credit; and

2 [(e)] **(E)** Power source and environmental impact information necessary to ensure that all con-
 3 sumers have useful, reliable and necessary information to exercise informed choice, as determined
 4 by the commission.

5 **(b) Information provided under paragraph (a)(E) of this subsection must be equivalent**
 6 **to the power source and environmental impact information the commission requires electric**
 7 **companies to disclose to retail electricity consumers, including for power supplied through**
 8 **the electricity service supplier’s own generating resources, and is not subject to**
 9 **confidentiality.**

10 (5)(a) A retail electricity consumer of an electric company shall receive, upon request, a sepa-
 11 rate bill from every individual electricity service supplier that provides products or services to the
 12 retail electricity consumer. If a retail electricity consumer of an electric company does not request
 13 separate bills, or a consolidated bill from an electricity service supplier as provided in paragraph
 14 (c) of this subsection, the electric company shall consolidate the bills for all electricity services into
 15 a single statement, and electricity service suppliers shall provide to the electric company the infor-
 16 mation necessary to prepare a consolidated statement.

17 (b) [*The requirement for bill consolidation by an electric company shall continue through December*
 18 *31, 2001, after which time*] The commission may waive the requirement **for bill consolidation by an**
 19 **electric company** if the waiver results in effective billing procedures for retail electricity consum-
 20 ers.

21 (c) Upon the request of a retail electricity consumer of an electric company, an electricity ser-
 22 vice supplier shall consolidate the bills for all electricity services into a single statement, and
 23 electric utilities and other electricity service suppliers shall provide to the billing electricity service
 24 supplier any information necessary to prepare a consolidated statement.

25 (d) For retail electricity consumers of an electric company, the commission shall adopt by rule
 26 provisions relating to the failure of a consumer to make full payment on a consolidated bill. The
 27 rules shall address collection of payments, service disconnection and reconnection, and the allo-
 28 cation of costs associated with collection, disconnection and reconnection. A distribution utility
 29 shall be solely responsible for actual disconnection and reconnection.

30
 31 **RESPONSIBLE CONTRACTOR LABOR STANDARDS**

32
 33 **SECTION 8. (1) For purposes of this section:**

34 (a) **“Large-scale project” means a renewable energy generation or storage facility, where**
 35 **the total capital costs and expenses necessarily incurred in the acquisition, erection, con-**
 36 **struction and installation of the facility, including materials, labor, planning and site devel-**
 37 **opment, are \$1 million or more.**

38 (b) **“Repower” means replacement of enough of the original generation equipment or**
 39 **components to make an original energy generation facility equivalent to a new facility, such**
 40 **that at least 80 percent of the fair market value of the facility derives from new generation**
 41 **equipment or components installed as part of the replacement project.**

42 (2) A person who constructs or repowers a large-scale project sited in Oregon shall, at
 43 the time of contract finalization for development of the project or delivery of energy from
 44 that project, attest or declare, under penalty of perjury as described in ORCP 1 E, that
 45 during all periods of construction, the person:

1 (a) Will pay employees the prevailing rate of wage for an hour’s work in the same trade
 2 or occupation in the locality where the labor is performed;

3 (b) Will offer employer-paid health care and retirement benefits to the employees per-
 4 forming the labor on the construction project;

5 (c) Will participate in an apprenticeship program registered with the State Apprentice-
 6 ship and Training Council or similar apprenticeship program;

7 (d) Is licensed and in good standing to perform the work, and is not ineligible to receive
 8 a contract or subcontract for public works under ORS 279C.860;

9 (e) Can demonstrate a history of material compliance with the rules and other require-
 10 ments of state agencies with oversight regarding workers’ compensation, building codes and
 11 occupational safety and health;

12 (f) Can demonstrate a history of compliance with federal and state wage and hour laws;
 13 and

14 (g) Has policies in place that are designed to limit or prevent workplace harassment and
 15 discrimination and that promote workplace diversity, equity and inclusion for, including but
 16 not limited to, women, veterans and Black, Indigenous and other people of color.

17 (3) The person constructing or repowering the large-scale project shall provide the
 18 attestation or declaration to the Bureau of Labor and Industries and provide notice of such
 19 delivery to the purchaser of the project or of the energy from the project.

20 **SECTION 9.** The obligation to provide an attestation or declaration pursuant to section
 21 8 of this 2021 Act applies to large-scale projects that begin construction after the effective
 22 date of this 2021 Act.

23
 24 **CONFORMING AMENDMENTS**

25
 26 **SECTION 10.** ORS 469A.205 is amended to read:

27 469A.205. (1) Electric utilities shall allow retail electricity consumers to elect a green power
 28 rate. A significant portion of the electricity purchased or generated by a utility that is attributable
 29 to moneys paid by retail electricity consumers who elect the green power rate must be qualifying
 30 electricity, and the utility must inform consumers of the sources of the electricity purchased or
 31 generated by the utility that is attributable to moneys paid by consumers who elect the green power
 32 rate. The green power rate shall reasonably reflect the costs of the electricity purchased or gener-
 33 ated by the utility that is attributable to moneys paid by retail electricity consumers who elect the
 34 green power rate. All prudently incurred costs associated with the green power rate are recoverable
 35 in a green power rate offered by an electric company.

36 (2) Any qualifying electricity procured by an electric utility to provide electricity under a green
 37 power rate under subsection (1) of this section or ORS 757.603 [(2)(a)] **(3)(a)** may not be used by the
 38 utility to comply with the requirements of a renewable portfolio standard.

39 (3) The provisions of subsection (1) of this section do not apply to electric companies that are
 40 subject to ORS 757.603 [(2)(a)] **(3)(a)**.

41 (4) An electric utility may comply with the requirements of subsection (1) of this section by
 42 contracting with a third-party provider.

43 **SECTION 11.** ORS 757.247 is amended to read:

44 757.247. (1) The Public Utility Commission may authorize a public utility, upon application of the
 45 utility, to file and place into effect a tariff schedule establishing rates or charges for the cost of

1 energy resource measures provided to an individual property owner or customer pursuant to an
 2 agreement entered into between the individual property owner or customer and the public utility.
 3 Energy resource measures provided under this section may include:

4 (a) The installation of renewable energy generation facilities on the property of property owners
 5 or the premises of customers;

6 (b) The implementation of energy conservation measures, including measures that are not cost-
 7 effective;

8 (c) The installation of equipment or devices or the implementation of measures that enable de-
 9 mand reduction, peak load reduction, improved integration of renewable energy generation or more
 10 effective utilization of energy resources;

11 (d) Loans for the purposes described in paragraphs (a) to (c) of this subsection; and

12 (e) Direct payments to third parties for the purposes described in paragraphs (a) to (c) of this
 13 subsection.

14 (2) Subject to the agreement entered into between the individual property owner or customer
 15 and the public utility, a tariff schedule placed into effect under this section may include provisions
 16 for:

17 (a) The payment of the rates or charges over a period of time;

18 (b) Except as provided in subsection (5) of this section, a reasonable rate of return on any in-
 19 vestment made by the public utility;

20 (c) The application of any payment obligation to successive owners of the property to which the
 21 energy resource measure is attached or to successive customers located at the premises to which
 22 the energy resource measure is attached; and

23 (d) The application of the payment obligation to the current property owner or customer alone,
 24 secured by methods agreed to by the property owner or customer and the public utility.

25 (3) Application of a tariff schedule under this section is subject to approval by the commission.

26 (4) If a payment obligation applies to successive property owners or customers as described in
 27 subsection (2)(c) of this section, a public utility shall record a notice of the payment obligation in
 28 the records maintained by the county clerk under ORS 205.130. The commission may prescribe by
 29 rule other methods by which the public utility shall notify property owners or customers of such
 30 payment obligations.

31 (5) A public utility may use moneys obtained through a rate established under ORS 757.603
 32 [(2)(a)] (3)(a) to provide a renewable energy generation facility to a property owner or customer
 33 under this section. A public utility may not charge interest to a property owner or customer for a
 34 renewable energy generation facility acquired with moneys obtained through a rate established un-
 35 der ORS 757.603 [(2)(a)] (3)(a).

36 (6) Agreements entered into and tariff schedules placed into effect under this section are not
 37 subject to ORS 470.500 to 470.710, 757.612 or 757.689.

38 **SECTION 12.** ORS 757.659 is amended to read:

39 757.659. According to the applicable provisions of ORS 756.060 and ORS chapter 183, the Public
 40 Utility Commission shall adopt such rules as are necessary to implement ORS 757.600 to 757.667.
 41 Rules adopted by the commission shall address at least the following:

42 (1) Requirements and methodologies for each electric company to provide unbundled rates and
 43 services pursuant to ORS 757.642.

44 (2) Requirements for each electric company allowing aggregation of electricity loads pursuant
 45 to ORS 757.627, which may include aggregation of demand for other services available under direct

1 access.

2 (3) Requirements for consumer protection. Consumer protection rules adopted by the commission
 3 that relate to electricity service suppliers shall be applicable throughout this state and shall, at a
 4 minimum, contain provisions for the disclosure of price, power source and environmental impact in
 5 contract offers and marketing information.

6 (4) Market valuation methodologies for determining the amount and recovery of the costs of
 7 uneconomic utility investment and the amount of and credit for economic utility investment.

8 (5) Requirements for each electric company to offer a portfolio of rate options under ORS
 9 757.603.

10 (6) The method of determining a default supplier for those consumers who are not eligible to
 11 participate in a portfolio program under ORS 757.603 in a manner that provides for viable competi-
 12 tion among electricity service suppliers and among power generation companies. The commission
 13 may condition the use of a default service option by requiring reasonable notice and commitment
 14 from a consumer who intends to use the default service option in nonemergency situations.

15 (7) Requirements for [*market structure*] **the competitive retail market** described in ORS
 16 757.646.

17 (8) Requirements for public purpose charges and credits under ORS 757.612.

18 (9) Requirements for meters, metering services, billing and collection services, and customer
 19 response functions.

20

21

CAPTIONS

22

23 **SECTION 13. The unit captions used in this 2021 Act are provided only for the conven-**
 24 **ience of the reader and do not become part of the statutory law of this state or express any**
 25 **legislative intent in the enactment of this 2021 Act.**

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