



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 2, 2025

Representative Shelly Boshart Davis
900 Court Street NE H389
Salem OR 97301

Re: Effect of House Bill 2138 -4 amendments on greenfield development

Dear Representative Boshart Davis:

Based on a conversation held at the House Committee on Housing and Homelessness March 26, 2025, public hearing on introduced House Bill 2138 (2025) between yourself and Representative Gamba on the effects of your proposed -4 amendments to the bill, you asked whether the -4 amendments would prohibit cities from allowing middle housing on new greenfield development.

At your request, a copy of this opinion is being delivered to Chair Marsh, Representative Gamba and the committee.

The short answer to your question is no.

ORS 197A.420 currently requires certain cities and Metro, on all lands zoned for residential uses, to allow certain types of middle housing, including duplexes, triplexes, quadplexes, cottage clusters and townhouses.

Section 1 of introduced HB 2138 makes a variety of organizational and substantive changes to ORS 197A.420. Those changes have the substantive effect of allowing detached duplexes, triplexes and quadplexes to qualify as middle housing, expanding allowable cottage clusters, ensuring that existing single-unit dwellings may be used as a part of resulting middle housing developments, allowing middle housing on urban unincorporated lands beyond the city limits, allowing additional middle housing units with an accessibility or affordability component, and limiting when local governments may condition middle housing development on traffic impact analyses or traffic-related concessions.

One of the reorganizational changes in HB 2138 is to define "zoned for residential use" in ORS 197A.420 (1)(j) only for that section and section 3 of the bill. This defined term is used as the applicable geographic range for the requirements in ORS 197A.420 (2)(a) and (b) and (3) that cities, Metro and unincorporated areas "shall allow" specified middle housing types.

Your requested -4 amendments in section 1 of the bill would amend the definition of "zoned for residential use" in the base bill to remove lots created after June 30, 2021. Under this change, large tracts of lands that are contemplating subdivision (or have since that date

completed a subdivision) for residential development, often referred to as greenfield development, would no longer be required to allow middle housing on the resulting lots.

However, this only impacts what cities *must allow* under state law. ORS 197A.420 (6)(b) explicitly allows cities to allow “middle housing in areas not required under this section.” Neither the introduced HB 2138 nor the -4 amendments would change that. If the HB 2138-4 amendments became law, cities that desire to allow middle housing on new lots in greenfield developments may continue to do so.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink, appearing to read "R. Mauger", is positioned above the typed name of Robert Mauger.

By
Robert Mauger
Senior Deputy Legislative Counsel

c: Representative Pam Marsh, Chair, House Committee on Housing and Homelessness
Representative Mark Gamba
Iva Sokolovska, LPRO Analyst, House Committee on Housing and Homelessness