



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

March 16, 2021

Doug Rux, Community Development Director
City of Newberg
414 E. First Street
Newberg, OR 97132
Sent via e-mail



RE: Middle Housing Infrastructure-Based Time Extension Request Notice of Compliance

Dear Mr. Rux,

The Department of Land Conservation and Development (DLCD or Department) received a submittal from the City of Newberg regarding an infrastructure-based time extension request (IBTER), which proposes to delay the enactment of local provisions allowing middle housing in accordance with HB 2001 (2019) and Oregon Administrative Rule (OAR) Chapter 660, Division 46. The City's application identified two discrete areas, north and south of the Newberg downtown core, where fire flow capacity is not currently sufficient to accommodate anticipated growth in dwelling units as a result of middle housing allowances.

The department considered the review criteria established in OAR 660-046-0360(5) to approve, approve with conditions, or deny a city's IBTER application.

*Based on the department's review of the City of Newberg's application and established criteria, the department **approves the City of Newberg's request for an infrastructure-based time extension request for the period specified in the city's submittal, with one condition described in section (7) below.***

Department Findings based on OAR 660-046-0360

(5)(a) Whether the identified deficiency is a significant infrastructure deficiency, consistent with the parameters and infrastructure-specific thresholds established in OAR 660-046-0330 and OAR 660-046-0340.

Eligible time extensions are only allowed for four infrastructure systems 1) transportation, 2) storm water, 3) sewer, and 4) water. The City of Newberg is requesting a time extension request only related to current and expected deficiencies in the water infrastructure system, singularly related to water fire flows. Pursuant to OAR 660-046-0340(3)(a) the City may request a time extension for "[a] significant infrastructure deficiency in localized (not citywide) water or sanitary sewer service that results in unacceptable service levels for water or sewer services."

The City of Newberg has established the following evaluation criterion to determine acceptable service levels for water infrastructure systems.

| Water System Component | Evaluation Criterion | 2017 WMP Value | Design Standard/Guideline |
|--|---|-----------------------|---|
| Service Pressure | Normal Range, during ADD | 40-80 psi | City's 2015 Public Works <i>Design and Construction Standards</i> |
| | Maximum, without PRV | 80 psi | Oregon Plumbing Specialty Code 608.2 |
| | Minimum, during emergency or fire flow | 20 psi | OAR 333-061 |
| Distribution Mains | Velocity during fire flow | Not to exceed 8 fps | City's 2015 Public Works <i>Design and Construction Standards</i> |
| | Velocity during ADD | Not to exceed 5 fps | |
| Required Fire Flow and Duration | Low Density – Single-Family and Duplex Residential <= 3,600 sq ft | 1,000 gpm for 2 hours | Oregon Fire Code |
| | Single-Family and Duplex Residential >3,600 sq ft | 1,500 gpm for 2 hours | |
| | Medium Density Residential | 1,500 gpm for 2 hours | |
| | High Density Residential | 2,000 gpm for 3 hours | |
| | Commercial | 3,000 gpm for 3 hours | |
| | Industrial, Institutional, and Hospitality | 4,500 gpm for 3 hours | |

In the North and South Areas, the City has found that existing water infrastructure systems exceed acceptable service levels for both service pressure and required fire flow and duration.

(5)(b) Whether the IBTER has adequately described and documented the identified significant infrastructure deficiency and has established a boundary for the requested extension area(s), as required by OAR 660-046-0350. The boundary for the requested time extension is a specific area where there is an identified significant infrastructure deficiency.

The City of Newberg identifies two areas of the city where water and fire flow deficiencies exist. The North Area (north of Downtown Newberg) is approximately .07 square miles in size. The South Area (south of Downtown Newberg) is approximately .62 square miles in size. Per OAR 660-046-0320 and -0330, the City may consider a 1% growth rate for infill development in the IBTER study areas. The City may also consider a 3% growth rate for un- or underdeveloped land in the IBTER study areas. The analysis in Table 2 of the Murraysmith technical memorandum shows an expected growth of 18 units within the South Area and a growth of 3 units within the North Area.

The City's water distribution system runs at relatively high pressures with most customers receiving near 80 pounds per square inch (psi), which is the Oregon Plumbing Code service pressure maximum. Modeled main line pressures under maximum daily demand in the IBTER south area are between approximately 90 and 100 psi. Pressures in the north study area range between approximately 80 and 90 psi. Normal average daily demand ranges from 40 – 80 psi.

Eight significant pipe improvement project are identified in for the South Area and one minor project is identified in the North Area to provide adequate fire flows to additional development. These improvements are largely intended to reduce high pipe flow velocities that are above or near maximum velocities.

(5)(c) Whether the proposed remediation plan is likely to be effective and presents the most expeditiously feasible course of action to enable implementation of middle housing provisions.

In Table 5 of their technical memorandum, Murraysmith identifies nine recommended improvements to remedy fire flow deficiencies in the North and South Areas. Eight improvements are located within the South Area and one improvement is located within the North Area. Murraysmith also identified costs (in 2020 dollars) for the improvements. The recommended improvements total \$5,737,000. The City also identifies a proposed timeline for funding each improvement. The City’s anticipated project timeline (shown below) includes three improvements funded as early as the 2021 fiscal year with others extending as far as the 2029 fiscal year.

| | | |
|-------------|--------------------------------------|---------|
| Project I-1 | Main, 4th, Lincoln & 5 th | FY22-24 |
| Project I-2 | Blaine St | FY25 |
| Project I-3 | 9th, Charles, & College | FY26-29 |
| Project I-4 | Meridian | FY25 |
| Project I-5 | 7th, Pacific, 9th & Paradise | FY23-26 |
| Project I-6 | River | FY22 |
| Project I-7 | 5th | FY21 |
| Project I-8 | 11th & Boston Square | FY21 |
| Project I-9 | Vermillion | FY21 |

The City is not proposing a bond measure to fund the infrastructure improvements identified in this application. The proposed timeline appears to be reasonable given estimated improvement costs and the analysis of the severity of the deficiencies.

(5)(d) Whether, in relation to the opportunity area map provided per OAR 660-046-0350(3)(g) and any other available data sources regarding income, race, or ethnicity within the jurisdiction, the local government has demonstrated that correction of the significant infrastructure deficiency will either help to overcome patterns of segregation by income, race, or ethnicity, and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics, or, at minimum, will not serve to perpetuate these inequities. To assist with this evaluation, local governments may demonstrate that the IBTER is consistent with a plan of actions over time by the local government and community partners that will reduce barriers to opportunity for all community residents, in all areas within the local government’s jurisdiction.

The City included an analysis of the actions the City has taken, or will take, to remove barriers to affordable housing for people based on income, race, or ethnicity. At present, the City has undergone several initiatives to increase the affordability of housing including a newly adopted five-year City Council work plan on housing that identified 42 items for the City of work on to address housing affordability. Additionally, in 2019 the City Council adopted a new community visioning program that outlined a Goal to improve housing affordability and included three strategies 1) evaluate zoning changes, fees, and permitting processes for housing, 2) explore creating incentives to encourage alternative housing, and 3) increase access to affordable means of home preservations and maintenance. The City has also adopted a construction excise tax in 2020 to allow the City to partner with developers to provide housing for those residents who earn 80% or less of the city's median household income.

The City's IBTER application is intended to identify and correct existing and future deficiencies in water infrastructure in areas near the city's downtown core. The application represents the most efficient and expeditious process to overcome potential patterns of segregation by income, race, or ethnicity and to foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

(5)(e) Whether the time period proposed for the IBTER is the minimum necessary to remedy the significant infrastructure deficiency.

The City has identified a timeline for the nine identified improvements to the water system in the two IBTER areas. The department appreciates the city prioritizing the minor improvement necessary in the North Area. As outlined in the application, the City proposes to fund the I-9 improvement in the North Area in the 2021 fiscal year (by July 2022). Once the improvement is made in the North Area, the Department expects the City to begin allowing the development of middle housing in that area pursuant to the conditions of approval, outlined in section (7) below.

Improvements in the South Area, will take longer to fund and complete. This is largely because the improvements necessary in the South Area are to remedy deficiencies that significantly exceed acceptable level of fire flow velocity and are therefore more costly. Based on the analysis provided the Murraysmith technical memorandum and the City's reasonable improvement timelines, the Department finds that the expected timeline and proposed funding mechanisms to be the minimum necessary to remedy the significant infrastructure deficiencies.

(6) Response to Comments. The department's decision under section (4) shall include a response to each valid comment.

On January 25, 2021, the Department notified the City of Newberg that their IBTER application was deemed complete. On that same day, the Department posted the City of Newberg on the Department website and opened a 21-day public comment period. Public comments were to be submitted to the department via email by February 15, 2021.

The Department received no public comment on the City of Newberg's IBTER application.

(7) Conditions of Approval. The department may impose conditions in time extensions that it deems necessary to satisfy the review criteria or to ensure the time extension is consistent with the intent of OAR chapter 660, division 46, ORS 197.758, and Oregon Laws 2019, chapter 639, section 4.

The City of Newberg's IBTER application proposes delaying enactment of middle housing provisions in both the North and South Areas, as identified in the application, based on the current and expected deficiency of adequate fire flow velocity and pressure levels. The City has also identified an expected timeline to fund and complete nine recommended water system improvements. Eight of these recommended improvements are located within the South Area and one improvement is located within the North Area. The Department approves the City's IBTER application in both the North and South Area for the timeline outlined in the application, with the following condition:

- 1) In the North Area, the single improvement necessary in that area (identified as improvement "I-9" in the City's application) is expected to be funded in the 2021 fiscal year (by July 2022). Once that improvement is funded and completed by the City by July 2022, the city may no longer apply an IBTER exclusion to the development of middle housing, as allowed in the adopted Newberg Development Code, in the North Area.

(8) Appeals.

- (a) **Within 21 days of the mailing of the department's decision the local government submitting the IBTER or a person that submitted a valid comment may file an appeal, in writing, of the decision to the Land Conservation and Development Commission. The appellant shall simultaneously provide a copy of the appeal to each recipient of the department's decision as indicated by the department's certificate of service.**
- (b) **Appeals must identify the specific findings and analysis that are alleged to be made in error in relation to the applicable criterion or criteria. A challenge to a condition of approval under section (7) must specify how the condition is inconsistent with the intent of OAR chapter 660, division 46, ORS 197.758, and Oregon Laws 2019, chapter 639, section 4. An appellant may submit written materials in support of the appeal.**
- (c) **The local jurisdiction or a party that submitted a valid comment may file a written response to the appeal with the Department within 21 days of the filing of the appeal.**
- (d) **The Commission shall hold an appeal hearing within 120 days of the filing of the appeal. The appeal hearing shall be a contested case hearing. In making its decision the Commission may consider:**
 - (A) **All materials in the record that led to the Department decision under section (4);**

- (B) Any written materials submitted in support of the appeal under subsection (8)(b);**
 - (C) Any timely written responses filed in response to the appeal under subsection(8)(c);**
 - (D) The department staff report and recommendation to the Commission; and**
 - (E) Oral arguments and evidence presented at the appeal hearing.**
- (e) The Commission shall issue a final order rejecting or upholding the appeal within 30 days of the appeal hearing.**

No party submitted a valid comment during the 21-day public comment period for the City of Newberg's IBTER application. The City of Newberg maintains the ability to appeal the department's decision using the above procedure.

OAR 660-046-0370 Duration of Time Extension.

- (1) As provided in OAR 660-046-0350(3)(f)(A), the IBTER must specify when the local government intends to correct the significant infrastructure deficiency. The IBTER must provide a detailed timeline for a complete plan of action that will remedy the significant infrastructure deficiency, which may include phased infrastructure improvements and contingent actions and timelines based on circumstances outside the control of the local government.**
- (2) If, for reasons beyond the control of the local government, the local government cannot complete an approved remediation plan by the deadline specified in the time extension decision, the local government, prior to the expiration date of a time extension, may prepare an amended remediation plan and submit the plan for department consideration. With the exception of application deadlines specified in OAR 660-046-0350(1), the amended remediation plan must be consistent with the provisions of OAR 660-046-0300 through OAR 660-046-0370. The amended remediation plan must explain why the initial approved plan could not be completed on schedule. Department review of the amended remediation plan is not subject to the completeness review period specified in OAR 660-046-0350(2), nor the required decision timelines in OAR 660-046-0360(4). Otherwise, the review process and criteria for the amended remediation plan must be consistent with the requirements of OAR 660-046-0360. Additionally, the department shall evaluate the following considerations in review of any amended remediation plan:
 - (a) Whether the local government anticipated or reasonably should have anticipated the contingencies causing delay in the initial remediation plan;**
 - (b) Whether additional delay in the enactment of middle housing allowances is warranted; and**
 - (c) Whether the allowance for middle housing in the subject area would provide an opportunity for other parties to construct the necessary****

infrastructure as needed in association with middle housing development.

- (3) Upon the expiration date of a time extension, the local government must either enact development code regulations implementing middle housing or apply the model code, as applicable, per OAR 660-046-0100 or OAR 660-046-0200.**

The city may request a time extension to complete the repairs outlined in the IBTER application. Time extensions, as well as requirements for the submittal and review of an amended remediation plan must be made pursuant to OAR 660-046-0370.

Please feel free to contact Ethan Stuckmayer, at 503-302-0937, or at ethan.stuckmayer@state.or.us if you have any questions or need further assistance.

Sincerely,



Jim Rue
Director, Department of Land Conservation and Development

cc: Gordon Howard, DLCD
Ethan Stuckmayer, DLCD
Robert Mansolillo, DLCD
Kevin Young, DLCD
Sarah Marvin, DLCD
Angela Williamson, DLCD