



## TUALATIN CITY PLANNING COMMISSION MEETING

THURSDAY, DECEMBER 10, 2020

JOIN ZOOM MEETING

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TG90TMDMC3VYQT09](https://us02web.zoom.us/j/81957345666?pwd=WVJWAW9MU0HQC2NW TG90TMDMC3VYQT09)

MEETING ID: 819 5734 5666

PASSCODE: 962158

Bill Beers, Chair

Mona St. Clair, Vice Chair

Daniel Bachhuber Mitch Greene

Alan Aplin Janelle Thompson

Ursula Kuhn

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### CALL TO ORDER & ROLL CALL

### ANNOUNCEMENTS & PLANNING COMMISSION COMMUNICATION

### APPROVAL OF MINUTES

[Consideration](#) of Tualatin Planning Commission Minutes of November 19, 2020

### COMMUNICATION FROM CITY STAFF

1. Introduction to Tualatin's Housing Production Strategy.

### FUTURE ACTION ITEMS

### ADJOURNMENT



UNOFFICIAL

**Tualatin Planning Commission**

**MINUTES OF November 19, 2020**

**TPC MEMBERS PRESENT:**

William Beers, Chair  
Mona St. Clair, Vice Chair  
Commissioner Alan Aplin  
Commissioner Janelle Thompson  
Commissioner Daniel Bachhuber  
Commissioner Ursula Kuhn  
Commissioner Mitch Greene

**STAFF PRESENT**

Steve Koper  
Tabitha Boschetti  
Erin Engman

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**1. CALL TO ORDER AND ROLL CALL:**

Chair Beers called the meeting to order 6:30 PM and reviewed the agenda. Roll call was taken.

**2. ANNOUNCEMENTS AND PLANNING COMMISSION COMMUNICATION**

Chair Beers provided a report of the Planning Commission's recommendation to the City Council on the Cannabis Code Plan Text Amendment (PTA 20-0003). The Council voted to adopt the originally proposed version of the code amendments not that made by the Planning Commission. Two Councilors (Grimes and Morrison) were against. Chair Beers was asked questions about the Planning Commission's recommendations by several of the Councilors. Chair Beers discussed the split nature of the Planning Commission and the decision to send a compromise amendment to the Council. Chair Beers also noted that there was public testimony against the amendments by Council-elect Hillier and testimony in favor provided by Western Oregon Dispensaries.

**3. REVIEW OF MINUTES:**

Chair Beers asked for approval of the TPC minutes dated October 15, 2020, with a minor correction. MOTION by Commissioner Green. SECONDED by Commissioner Thompson to approve the minutes as amended. MOTION PASSED 7-0.

**4. ACTION ITEMS**

**Banfield Pet Clinic Conditional Use Permit (CUP 20-0001)**

These minutes are not verbatim. The meeting was recorded, and copies of the recording are retained for a period of one year from the date of the meeting and are available upon request.

Chair Beers provided a summary of the application. The proposal is for a 2,900 square foot veterinary clinic located at 7975 SW Nyberg Street.

Erin Engman, Associate Planner presented the staff report for the proposed Conditional Use Permit CUP. Ms. Engman first presented information about the site – a 1.21 acre portion of a 31.91 acre greater site located at the Nyberg Rivers shopping center, which is zoned Central Commercial (CC). The site and surrounding area are fully developed, and thus no site improvements are required or proposed. Ms. Engman outlined the CUP criteria found in TDC 33.040, and noted that the proposed application satisfies the applicable criteria, which include a requirement that it be processed as a Type III application, requiring the subject hearing before the Planning Commission. Ms. Engman further noted that the proposed use, a Veterinary Clinic is listed as permitted conditionally in the CC zone by Table 53-1 of the TDC. All improvements proposed are to the interior of the existing building. Ms. Engman noted that conditional use compatibility criteria identified in TDC 33.040(5) have been satisfied, as identified in the Findings which are Attachment 1 of the packet. Ms. Engman concluded with a recommendation that the Planning Commission approve the application subject to recommended Conditions of Approval CUP-1 through CUP-6.

Commissioner Aplin asked why the hours of operation listed in the Conditions of Approval were greater than that proposed in the application. Ms. Engman replied that the intent was to build in flexibility should the desired hours change, but with the idea that overnight use would not be allowed.

Jeff Hammond presented on behalf of the applicant, Banfield Pet Clinics, and provided an overview of the company and its business model. Notable is the fact that Banfield does not itself operate boarding, training, outdoor facilities, or emergency services and focuses on short-term veterinary in-patient care. 3,000 square feet is a typical footprint, and typically 20 pets are seen per day.

Commissioner Kuhn asked questions about the definition of small animals in the TDC as well the nature of the relationship between the proposed location and existing adjacent clinics, included an existing location within a Petsmart pet store located off of I-5 at the Nyberg Wood shopping center. Mr. Hammond responded that the neighborhood model of the Banfield clinics allow for multiple locations within relative proximity to each other. Mr. Hammond also noted that it would be likely that the existing Banfield location would likely close and be relocated to the subject location, if approved. The size of the clinic would be three of the tenant spaces within the existing freestanding commercial multitenant building.

Commissioner Thompson wanted to know what public comment had been received. Ms. Engman noted that there was no public comment from adjacent tenants or the general public.

Ms. Engman also provided the definition from the TDC of small animals, which is a limitation required by the Conditional Use Permit.

Mr. Hammond provided additional information about the services provided by Banfield as well as that by other related companies owned by Banfield's parent Company.

Chair Beers opened the public testimony portion of the hearing.

Sharon Noell – 20805 SW 104<sup>th</sup> Avenue, Tualatin – asked whether or not boarding would be provided at this facility, as well as daycare. Ms. Noell clarified that she also wanted to know whether or not these uses are disallowed in the City.

Mr. Hammond responded that no boarding or daycare or grooming would be provided. Ms. Engman responded that these uses were allowed in other parts of the City. Chair Beers concurred.

Mr. Hammond declined opportunity for further comment or rebuttal.

Chair Beers closed the public hearing and public record and the Planning Commission began deliberations.

Chair Beers MOTION to approve CUP 20-0001 as written. SECOND by Councilor Green. Chair Beers indicated that he was satisfied by the application. Council Green concurred. Councilor Kuhn stated she felt that the traffic would be less. Ms. Engman noted that the proposed use would generate less traffic than the restaurant uses per the ITE manual. Commissioner Thompson noted that the conditions would address any potential for outside animal waste. APPROVED 7-0.

#### **Housing Comprehensive Plan Update Plan Text Amendment (PTA 20-0004)**

Tabitha Boschetti, Assistant Planner, presented the staff report for the proposed Plan Text Amendment, which is a city-initiated amendment. The proposal would update the Housing Element of the Comprehensive Plan.

Ms. Boschetti noted that the Planning Commission has been working on the proposed amendments in draft form over the last three prior meetings. Staff is seeking the Planning Commission's recommendation on the amendments which would be presented to the City Council at a public hearing on December 14, 2020.

Ms. Boschetti provided an overview of the Tualatin 2040 process, which originally started from the Tualatin Tomorrow visioning in 2014 and continued through the TDCIP code update in 2018 and the 2019 Housing Needs Analysis, Housing Strategies, and Policy Priorities. The current phase is implementation of the work that was previously done by updating the Housing Element of the Comprehensive Plan which provides the

guiding goals and policies, and act as the “scaffolding” for the more-specific Development Code and land development. The implementation work also includes updates to the Plan’s graphics and overall organization.

Ms. Boschetti highlighted an example of the update to the Housing Element, which includes direct translation of the 2019 Housing Strategies into goals and policies of the Comprehensive Plan which will then guide the direction of the Development Code and other city plans. The reorganization of the remaining Chapters of the Comprehensive Plan includes condensing and simplifying some of the existing code language in a policy-neutral manner. Ms. Boschetti also noted the work done by Ms. Engman to update the appearance of the Plan by applying the City’s existing branding guidelines.

Ms. Boschetti summarized her presentation by noting that the amendments are identified in the Findings as being compliant with applicable state, regional and local requirements for Plan Text Amendments, and that the Planning Commission was being respectfully asked to forward a recommendation of approval to the City Council.

Commissioner Aplin asked what feedback had been received by the development community on the proposed updated housing goals and policies. Commission Aplin also asked if this is a typical type of update that is done by other communities. Ms. Boschetti responded that at this stage of the work, because it is not changing the actual regulations, specific feedback on what could or could not be built was not sought. Ms. Boschetti replied that updating the Comprehensive Plan is done in a similar fashion by other cities.

Sharon Noell asked about how these changes would impact accessory dwelling units. Ms. Boschetti replied that the changes that include policies that would encourage development of a broad range of housing types, would also support accessory dwelling units. Chair Beers clarified that ultimately accessory dwelling unit language would be added more specifically in the development code. Steve Koper, Assistant Community Development Director also added that accessory dwelling units are

Commissioner Kuhn noted that there was nothing new, which was good because of all of the work that the Commission had done to shape it to date.

Commissioner Thompson expressed appreciation that staff had listened the Commission’s comments.

Mr. Koper expressed appreciation for the Planning Commission’s work as well as for Ms. Boschetti and Ms. Engman for their contributions.

Chair Beers asked for whether there is the opportunity to provide a redline version for the public to see.

Mr. Koper asked for any of the public who is interested in seeing a redline version to email [planning@tualatin.gov](mailto:planning@tualatin.gov) and staff can update the packet that we can send out and re-send to the Planning Commission. Mr. Koper noted that due to the nature of the reorganization of the code it could be a little difficult to read, but that we would be happy to provide it for the public. Ms. Boschetti also noted that the final version in the City Council packet on December 14, 2020 would be slightly updated after review by the City Attorney.

Chair Beers MOTION to recommend approval of PTA 20-0004 to the City Council as written. Commissioner Thompson SECOND. APPROVED 7-0.

## 5. FUTURE ACTION ITEMS

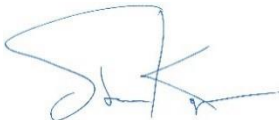
Mr. Koper mentioned that there would be a special meeting on December 10, 2020 for a presentation by the City's consultant on the creation of a Housing Production Strategy (House Bill 2003) for the City, which are regulatory, financial, and other measures that the City could adopt or implement to support production of middle housing (duplexes, triplexes, and quadplexes) as well as production of housing that is affordable to families earning 60 percent or less of median family income.

Mr. Koper also provided an update on a presentation from the City's consultant on the missing middle code updates (House Bill 2001). Mr. Koper offered either to have the Commission to discuss the topics either on the December 10, 2020 meeting or on a separate meeting date at the Commission's regularly scheduled December meeting on December 17, 2020. Mr. Koper proposed to send out a poll to the Commission to determine the preference.

Commissioner Bachhuber asked for a schedule for completion of the HB 2001 work. Mr. Koper responded that work with both consultants on HB 2001 and 2003 would need to be finished by the end of June 2021.

## 6. ADJOURNMENT

MOTION by Commissioner Aplin, to adjourn at 7:21 p.m.



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Steve Koper, Assistant Community Development Director



*City of Tualatin*

## CITY OF TUALATIN Staff Report

**TO:** Tualatin Planning Commissioners  
**THROUGH:** Steve Koper, Assistant Community Development Director  
**FROM:** Karen Perl Fox, Senior Planner  
**DATE:** 12/10/20

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**SUBJECT:**

Discussion on and Introduction to Tualatin's Housing Production Strategy.

**EXECUTIVE SUMMARY:**

The Tualatin Planning Commission will be presented an overview of a Housing Production Strategy, its purpose, and what input is needed from the Planning Commission.

- **What is Housing Production Strategy (HPS)?** It is a document that would be adopted by the City that includes a list analyzing specific actions for policymakers to consider to help Tualatin meet the housing needs identified in its 2019 Housing Needs Analysis and through public outreach. These actions could be regulatory – increasing buildings heights or density – or financial – provide tax exemption or abatement for affordable housing – or newly adopted policy.
- **Why adopt a Housing Production Strategy?** As part of the Tualatin 2040 project, which is intended to address an ongoing need for housing in Tualatin, it will help implement the 2019 Housing Needs Analysis and other pieces of the newly updated Housing Element of the Comprehensive Plan. Actions from the Housing Production Strategy could also help support the middle housing code update being done as part of Tualatin's House Bill 2001 work.
- **What input is needed on the Housing Production Strategy?** The Presentation (Attachment A) provides an overview and the Memo (Attachment B) provides more detail. Based on this information:
  - Are there any key housing needs missing? Any questions?
  - Do you agree with the broad categories of strategies? Any questions?
  - Are there any missing strategies, measures or actions?
  - Which strategy or strategies do you want to know more about?

## **MORE INFORMATION ABOUT THE PROJECT:**

### **How does the HPS relate to the HNA?**

The HPS is a separate effort, but builds upon the HNA, Housing Strategies and Policy Priorities produced under Tualatin 2040 work in 2019. The HPS can expand upon that earlier work to promote the development of identified housing needs and must achieve fair and equitable housing outcomes.

The City of Tualatin completed its first HNA in 2019, which was acknowledged and accepted by City Council on December 9, 2019 under Resolution No. 5479-19. Tualatin's HNA is an assessment of housing need and capacity that includes the inventory, determination and analysis required under OAR 660-007 (the Metropolitan Housing Rule). The new revised rules in OAR 660-008 now refer to an HNA as a Housing Capacity Analysis (HCS), which is the same as an HNA. To meet the new requirements under House Bill 2003, the City is required to adopt an HNA and incorporate it into its comprehensive plan by ordinance. The adoption of the HNA into the City's Comprehensive Plan is currently scheduled to come before City Council at its meeting on December 14, 2020.

### **What is the timeline for the HPS grant?**

This project kicked-off in late September 2020 and must be completed by June 15, 2021. The City may be able to continue some aspects of the HPS that go beyond the grant work after June 2021. The HPS grant project timeline is provided with this report. **See Attachment D.**

### **What are the key tasks for the HPS?**

- Task 1 - Project Kick Off
- Task 2 - Contextualized Housing Need and Engagement
- Task 3 - Strategies to Meet Future Housing Need
- Task 4 - HPS Report: Achieving Fair and Equitable Housing Outcomes

For additional detail on the key tasks, **See Attachment C** (under Exhibit A Statement of Work pages 16-20).

### **Background**

In 2019 the Oregon Legislature passed Housing Bill 2003, a law to ensure that communities meet the diverse housing needs of Oregonians. The law requires Oregon's medium and large cities with over 10,000 people to study the future housing needs of their residents and to develop strategies to make sure the housing needed is produced.

House Bill 2003 requires cities with over 10,000 people to analyze what housing is needed for current and future residents based on an understanding of housing needs in the context of household income and demographics (such as housing needs of senior households, racial and ethnic minority housing needs, and the housing needs of people with disabilities). The bill requires each city to adopt a housing production strategy within one year of completing the analysis. The housing production strategy will describe policies and programs that the City intends to develop and adopt over the next six years.

On June 8, 2020, City of Tualatin was awarded a grant from the Oregon Department of Land Conservation and Development (DLCD) to develop a prototype Housing Production Strategy (HPS) - one of four HPS prototypes across the state. On September 14, 2020, City Council adopted Resolution No.5520-20 authorizing the City Manager to execute an intergovernmental agreement with DLCD for grant assistance



with a Housing Production Strategy and Housing Code Update. Under the grant, DLCD matched the City of Tualatin with consultant, ECONorthwest, to help with this work. The scope of work and contract with DLCD for this grant is provide with report. **See Attachment C.**

In November 2020, the Land Conservation and Development Commission (LCDC) passed revisions to Oregon Administrative Rules (OAR) 660-008 to implement the requirements of developing a HPS, as described in House Bill 2003. The newly adopted rules require cities to develop housing production strategies to achieve fair and equitable housing outcomes.

**HPS Progress to Date** (October-November 2020):

Task 2 - Contextualized Housing Need and Engagement

- Initial steps have focused on data compilation and information gathering on outreach and engagement conducted to date.
- The PowerPoint presentation prepared by ECONorthwest summarizes the key background data, outreach and engagement efforts conducted to date that will inform the housing production strategies. **See Attachment A.**

Task 3 - Strategies to Meet Future Housing Need

Evaluation of Existing Measures and Identification of Gaps and Summary

- City staff and consultant reviewed Tualatin’s existing housing measures including the Tualatin 2040 housing strategies and existing code and then they identified gaps. Next, they reviewed approximately one hundred potential housing production strategies from an extensive list provided by DLCD. The new measures were reduced down in number to those most applicable to meet the housing needs in Tualatin. Next, the measures will be refined, further developed and evaluated.
- A memo prepared by ECONorthwest titled “Tualatin’s Existing Housing Measures and Potential New Measures” describes the process that was involved to review existing housing measures and to identify new measures for consideration. The memo includes a table that lists and summarizes the new measures under consideration. **See Attachment B.**
- Next, City staff and consultant will work with the Planning Commission to reduce the list of measures down to approximately twenty to take to the next level of consideration.

**Next Steps:**

Task 2 - Contextualized Housing Need work continues

Task 3 - Strategy Refinement

- Outreach and Engagement with Housing Producers and Service Providers

**Upcoming TPC Meetings with HPS:** February 18, 2021, March 18, 2021, May 20, 2021

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**ATTACHMENTS:**

- Attachment A: Presentation
- Attachment B: Memo on Tualatin’s Housing Measures and Gaps from ECONorthwest
- Attachment C: Scope and Contract 19122 under DLCD Grant for Tualatin’s HPS
- Attachment D: Project Schedule under DLCD Grant for Tualatin’s HPS

# Tualatin's Housing Production Strategy

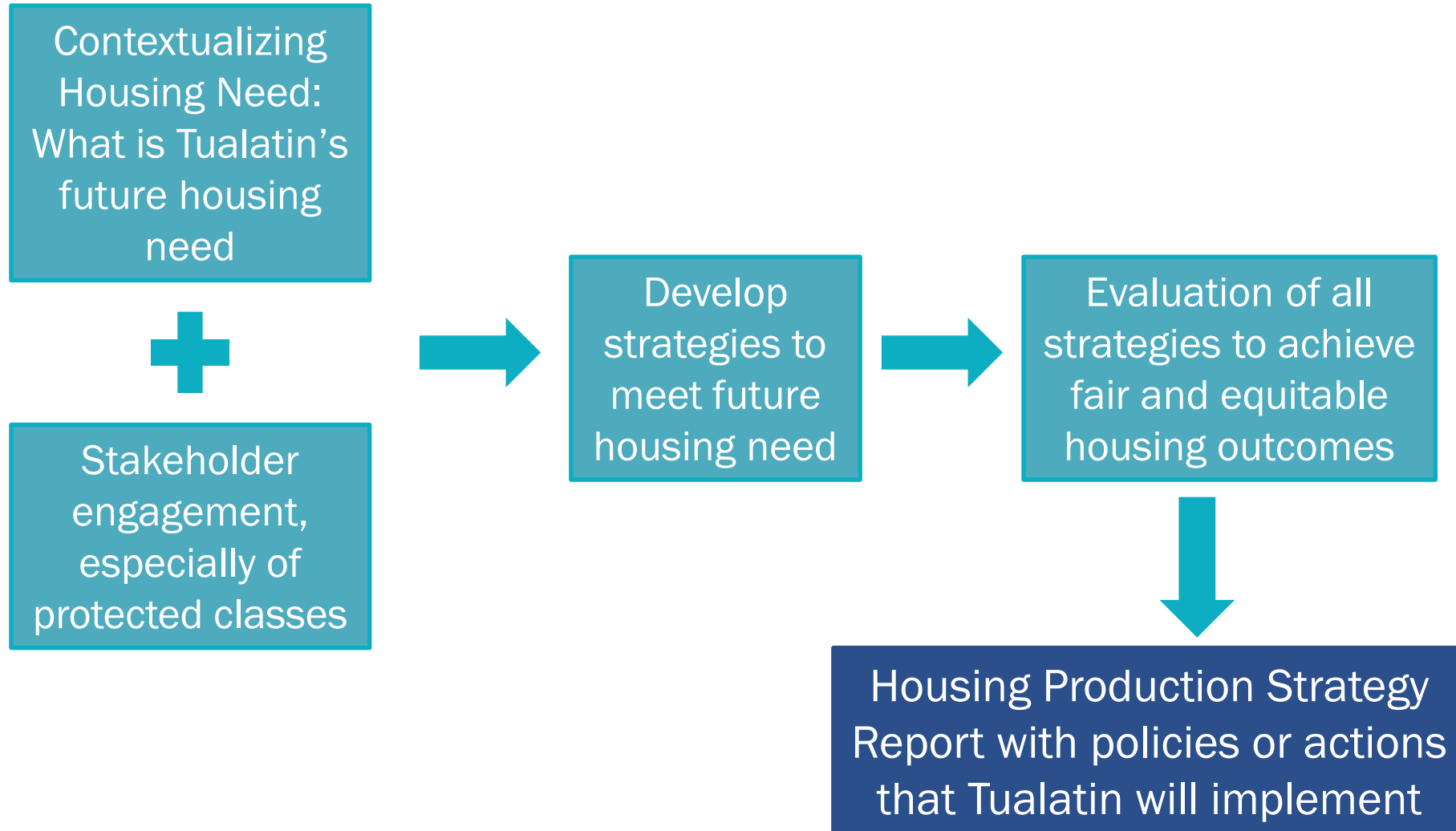
Planning Commission Meeting #1

December 10, 2020

**ECONorthwest**

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# A Housing Production Strategy is a 6 Year Action Plan



# How is the HPS Connected to the HNA?

## Housing Needs Analysis

- Buildable lands inventory
- Housing market
- Demographics & socioeconomic characteristics
- Housing affordability
- Forecast of new housing
- Assessment of land sufficiency



## Housing Production Strategy

- Refined understanding of housing need
- Evaluation of gaps in existing policies
- Identification of potential strategies
- Evaluation of new strategies
- Assessment of whether the strategies help achieve fair and equitable outcomes

# Project Schedule and Primary Tasks



X Project Kickoff Meeting

■ Interviews

■ Planning Commission Meeting

■ Draft Deliverable

■ City Council Meeting

■ Final Draft Deliverable

We are here.

# Housing Engagement Efforts

- Tualatin 2040 Efforts
  - 15 Interviews
  - Group stakeholder interview with Tualatin Aging Task Force
  - 4 Meetings with Technical Advisory Committee
  - 7 Meetings with Community Advisory Committee
  - Pop-up event and online survey
- Severely Rent Burdened Public Events
  - Under One Roof Luncheon (2019)
  - Our Home, Our Health Event (2020)

# Upcoming Stakeholder Engagement

- Up to 6 interviews with housing producers and service providers, focusing on key housing needs
- Additional discussions with stakeholders if needed



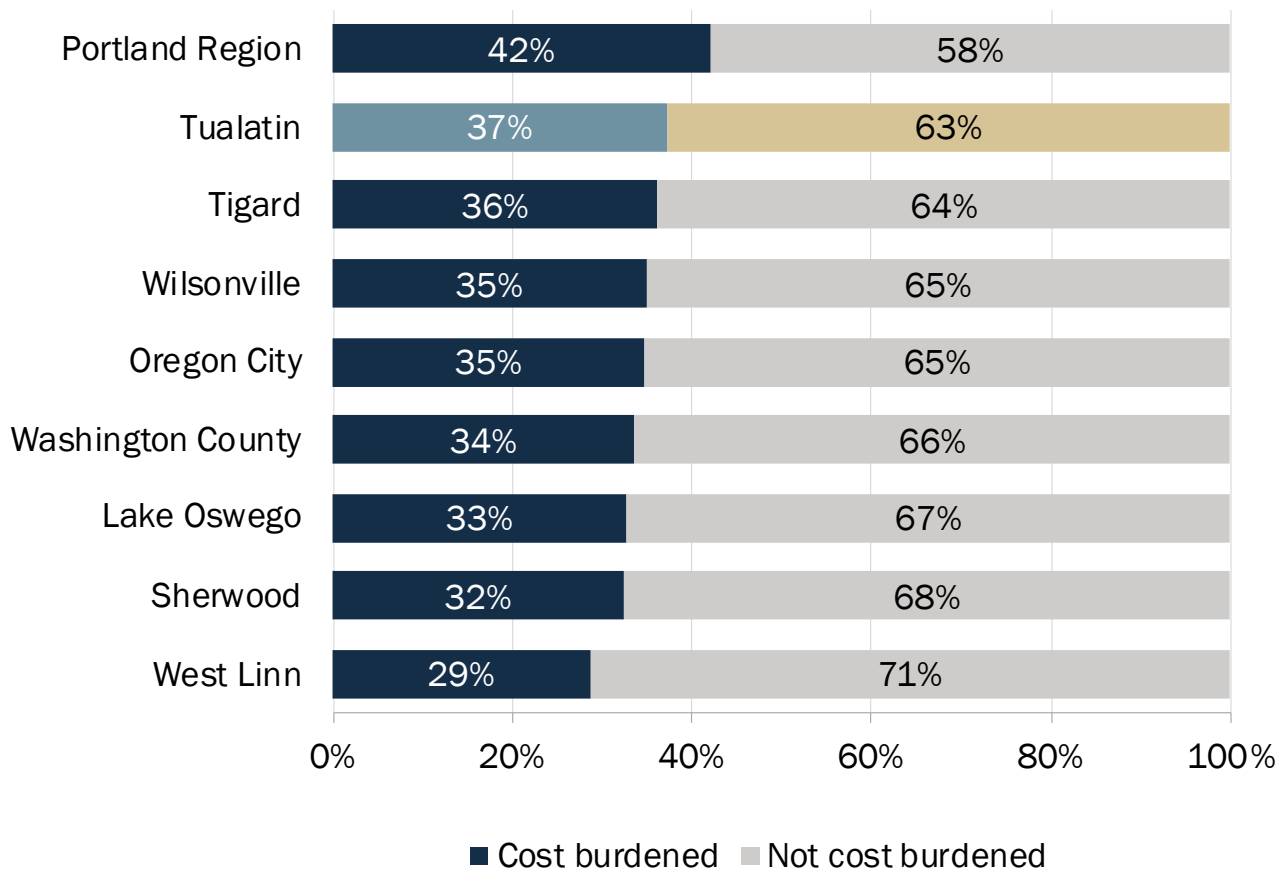
# Key Housing Needs



# Housing Affordability Concerns the Whole Region

## Cost Burden, Tualatin, 2013-2017

A household is cost burdened if they spend more than 30% of their income on housing costs.

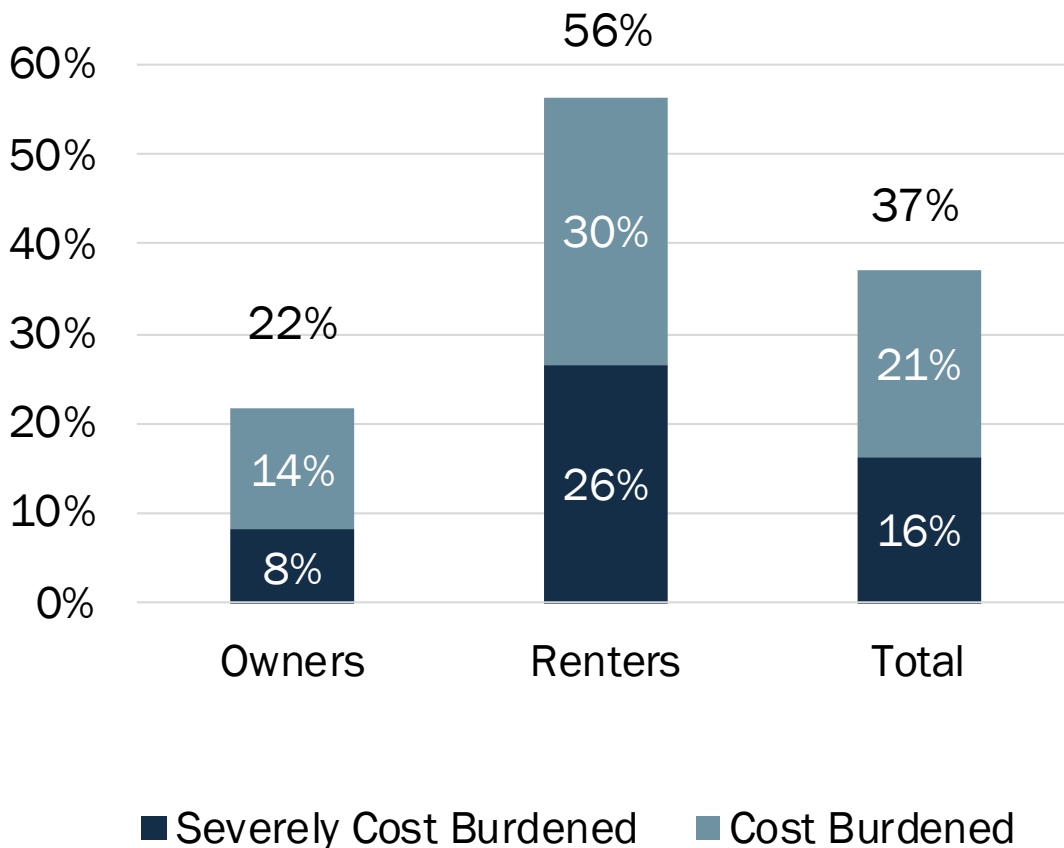


# Renters Particularly Struggle to Afford Housing

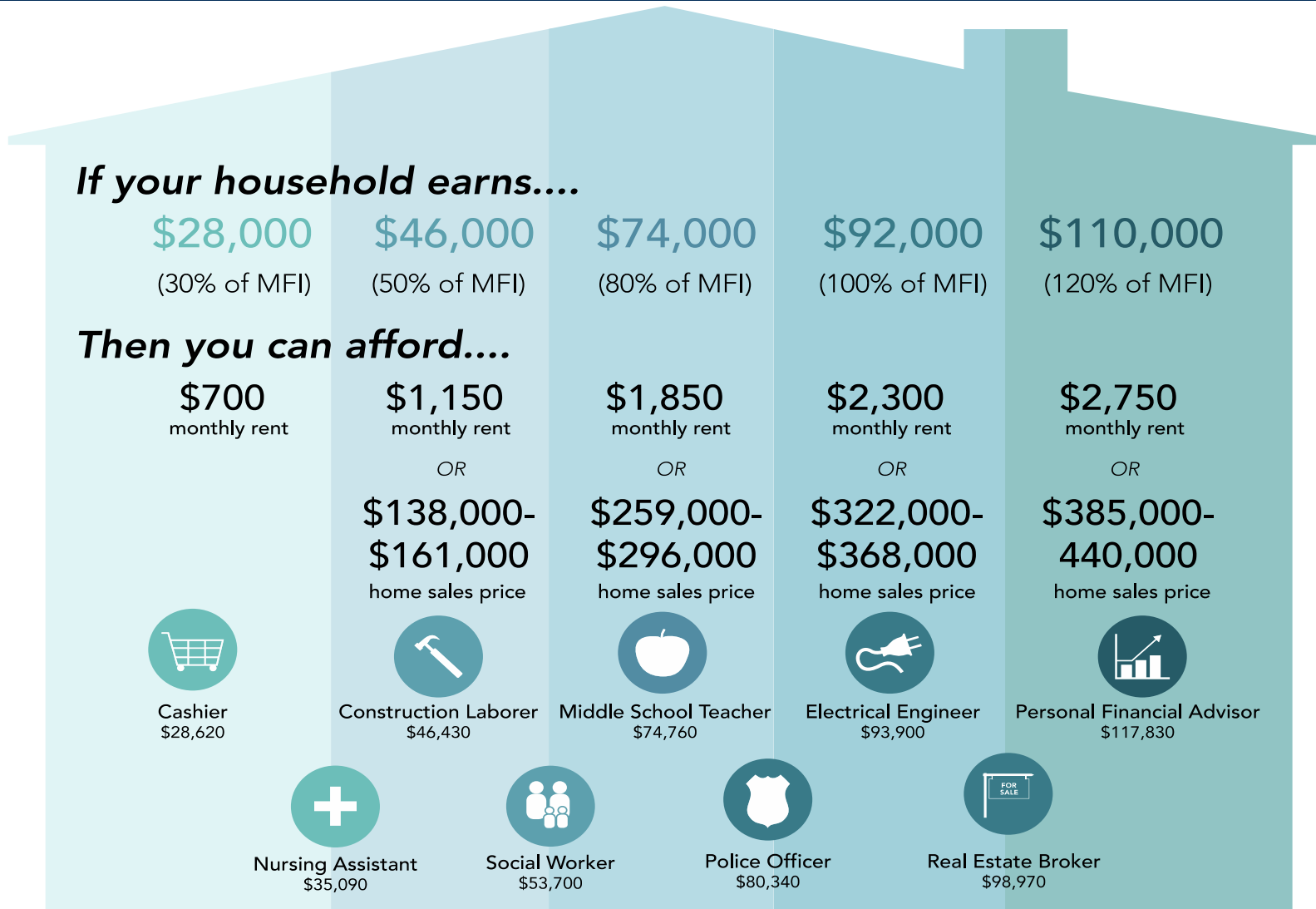
## Cost Burden by Tenure, Tualatin, 2013-2017

**Cost burdened:**  
spending more than  
30% of income on  
housing costs

**Severely cost burdened:**  
spending more than  
50% of income on  
housing costs

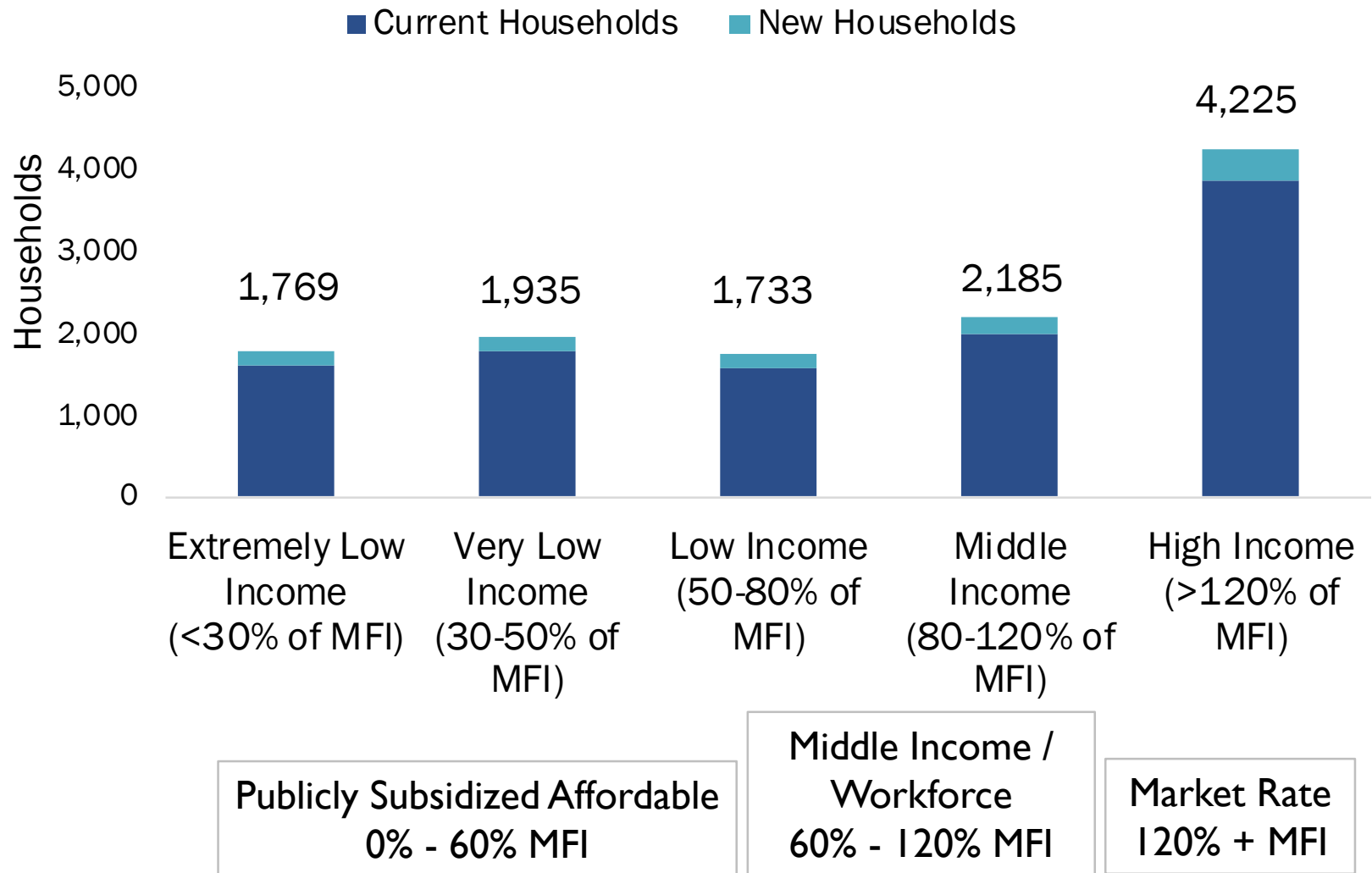


# What's considered affordable?



Source: U.S. Department of HUD 2020. U.S. Census Bureau, 2014-2018 ACS Table I9001.  
 Note: MFI is Median Family Income for a Family of 4.

# Tualatin's Current & Future Households by Income

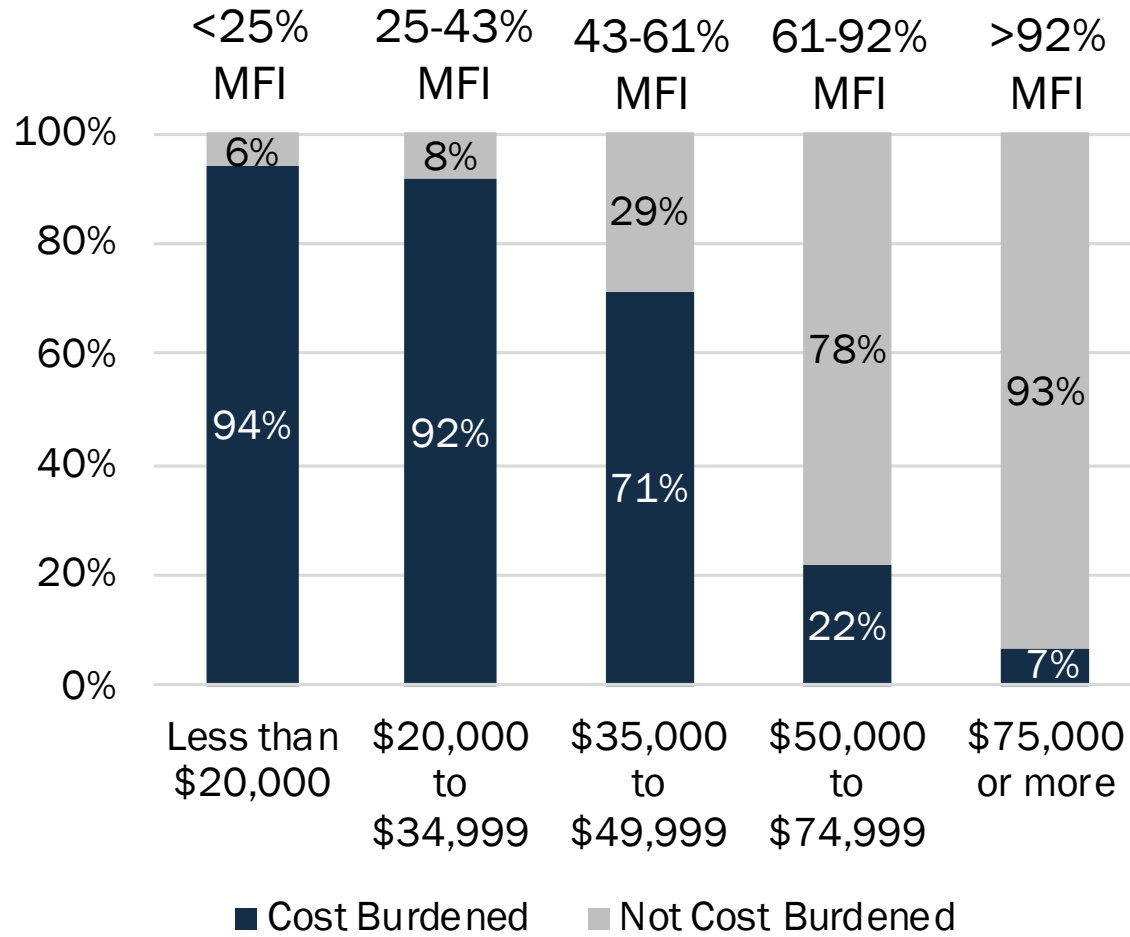


Source: 2014-2018 ACS, U.S. Census; PRC at PSU (2020-2040); and U.S. Department of HUD 2020 MFI.

Note: Median Family Income is estimated for a family of 4.

# Low-Income Renters Struggle the Most to Afford Housing

## Renter Cost Burden by Income, Tualatin, 2013-2017



Source: 2013-2017 American Community Survey, U.S. Census and U.S. Department of HUD (2018).  
Note: MFI is median family income for a family of 4.

# Rent Costs: Affordable for incomes above 60% of MFI

- A household would need to earn **\$58,000** to afford average multifamily rent of **\$1,450 for a 2-bedroom unit** (about 63% of MFI for a family of four)



# Homeownership: Affordable above 120% of MFI

- A household would need to earn **\$112,000** to afford the median cost of a house at **\$461,000** (about 122% of MFI for a family of four)



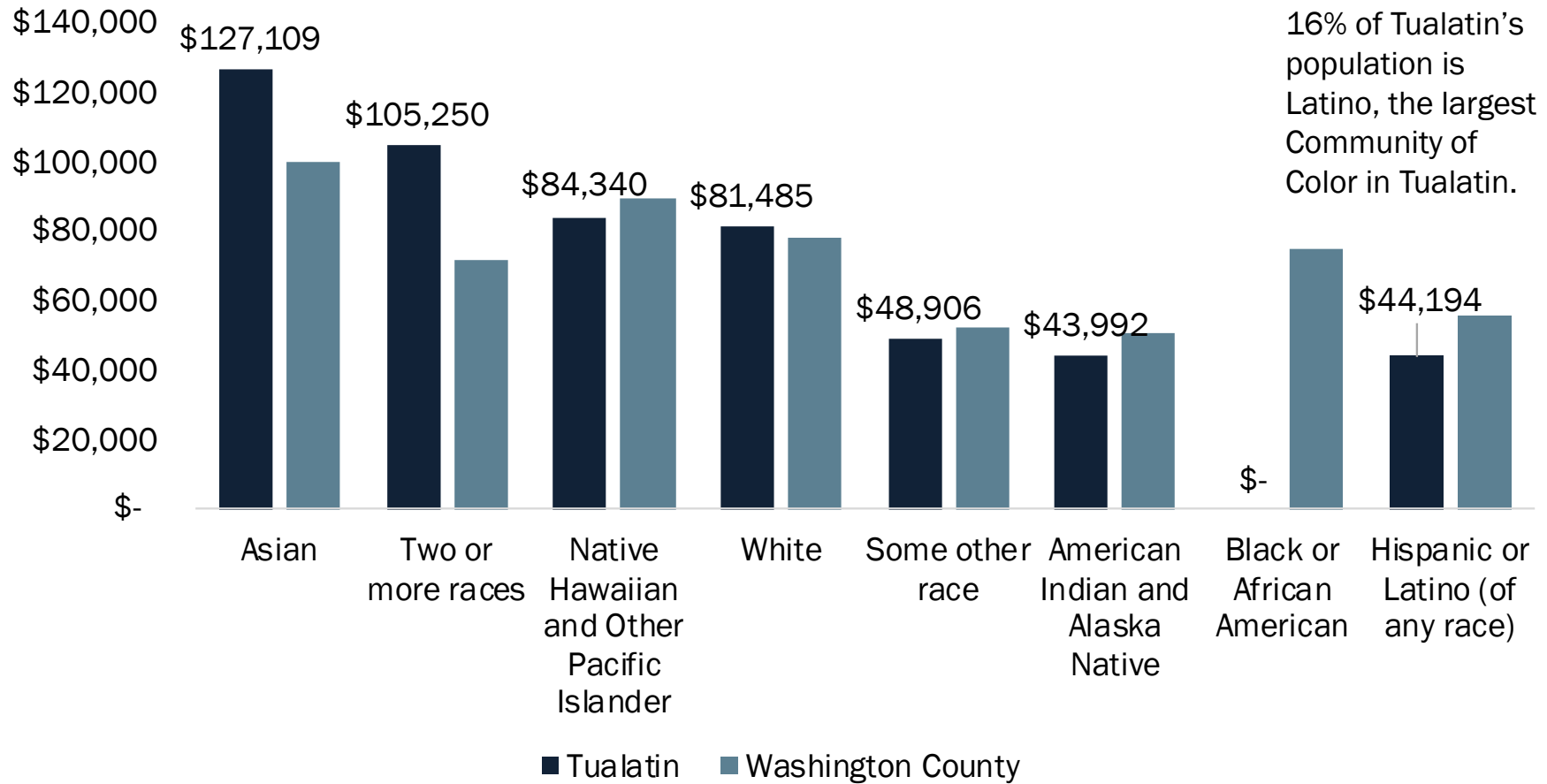
# Housing Needs Often Differ by Group

- Racial or ethnic groups
- People over 65 years old
- People with disabilities
- People experiencing homelessness:
  - Temporarily or chronically
  - Alone or with children



# Race/Ethnic Groups: Ability to Pay for Housing

## Median Household Income by Race and Ethnicity, 2014-2018

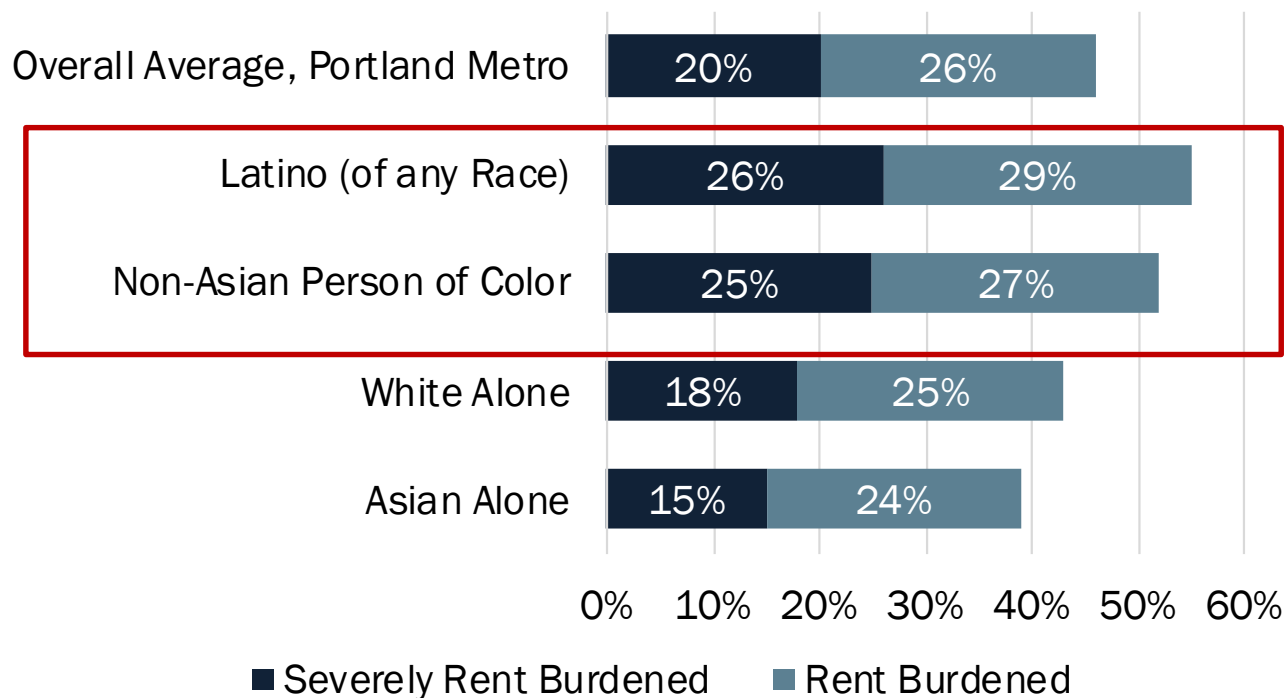


# Rent Burden by Race/Ethnicity, Portland Region

## Cost Burden of Renters by Race and Ethnicity, Portland, Region, 2018

Latino and Non-Asian People of Color are more likely to be rent burdened and severely rent burdened than other groups.

Latino and Non-Asian People of Color are more likely to rent than other groups.



Source: U.S. Census, 2018 ACS 1-year PUMS Estimates

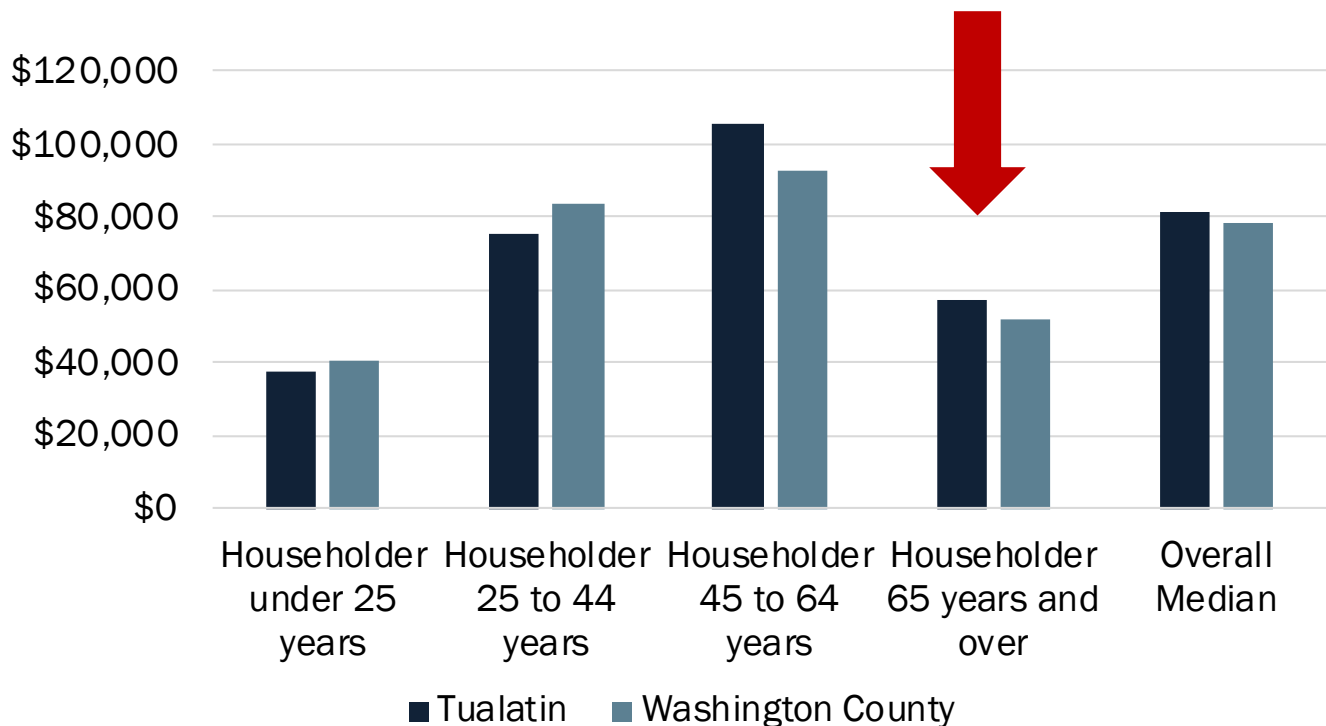
From the Report *Implementing a Regional Housing Needs Analysis Methodology in Oregon: Approach, Results, and Initial Recommendations* by ECONorthwest, August 2020

# Takeaway: Housing Need by Race and Ethnicity

- Racial and ethnic groups have disproportionate cost burden
  - 55% of households that identified as Hispanic or Latino and 52% of households that identified as non-Asian person of color are rent burdened
- Unique housing need
  - Access to affordable unit
  - Access to housing in locations with “high opportunity,” such as access to jobs, transit, services, or high-quality education
  - Access to housing without discrimination
- Uncertain housing preferences
  - Are household sizes larger for some racial or ethnic groups because of preferences (i.e., preference for multigenerational household) or because of lack of affordable housing?

# People Aged 65 and Older: Ability to Pay for Housing

## Median Household Income by Age, 2014-2018



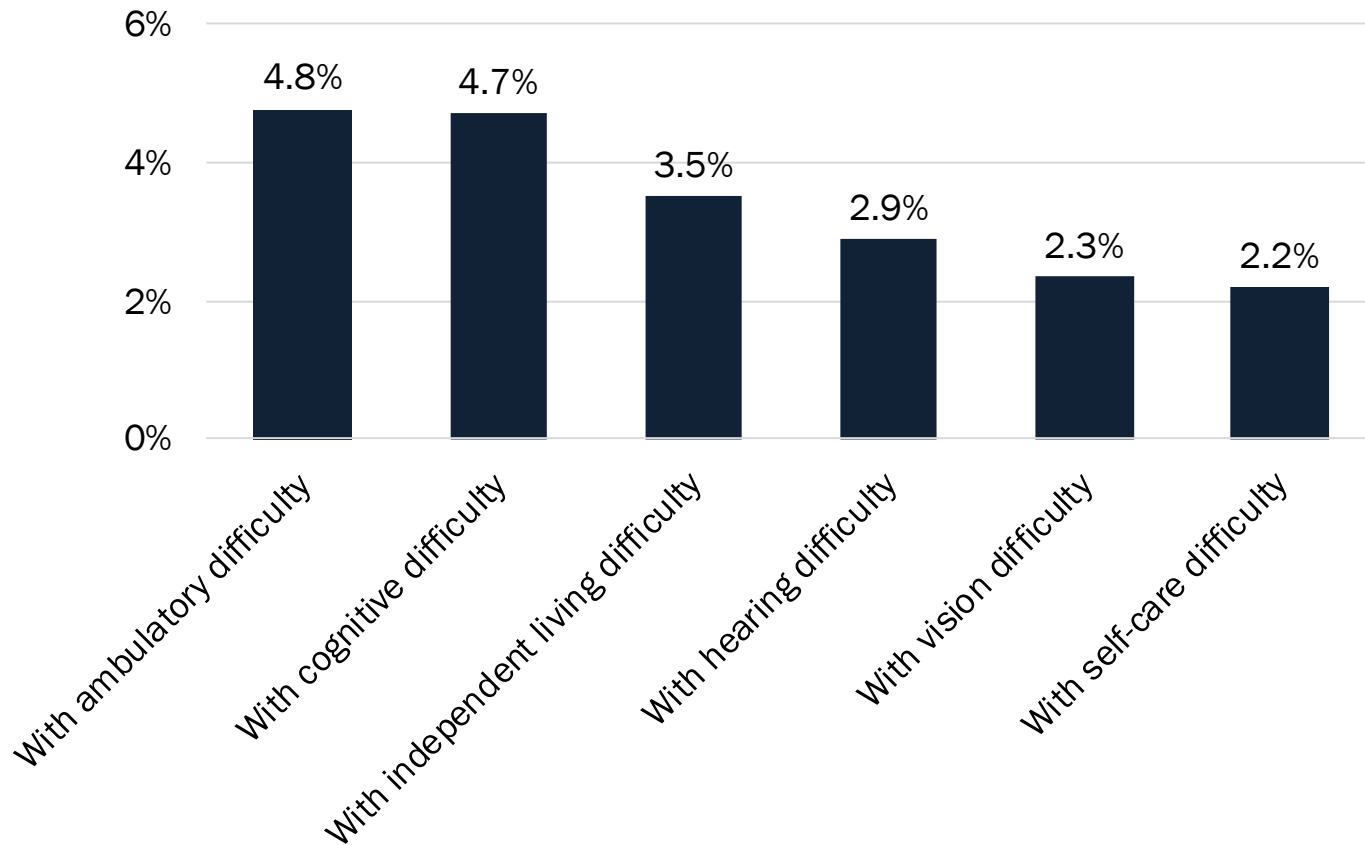
In Tualatin, income for people over 65 years is 70% of the overall average.

# Takeaway: Housing Need for People 65 Years and Older

- People 65 years of age and older are disproportionately cost burdened
  - 62% in the Portland Region are rent burdened
  - 2,680 people are over 65 years of age in Tualatin and forecast to grow.
- Unique housing need that varies for seniors
  - Physically accessible housing
  - Access to affordable unit
  - Access to housing with needed services
  - Access to housing without discrimination

# People with a Disability

Share of People with a Disability by Type (% of Total Population), Tualatin, 2014-2018



65% of people with a disability are rent burdened in the **Portland Region**, compared with an overall average of 46% rent burdened

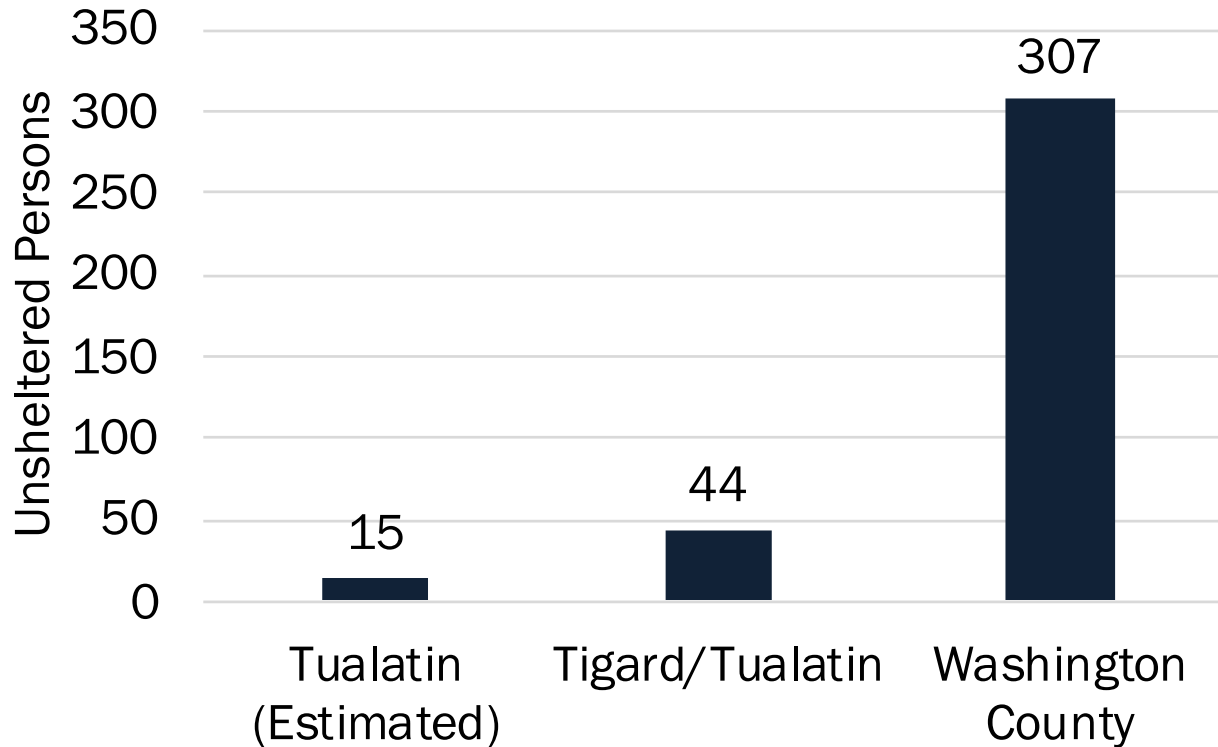
# Takeaway: Housing Need for People with a Disability

- People with a disability have disproportionate rent burden
  - 65% in the Portland Region are cost burdened
  - In Tualatin, 2,762 residents have one or more disabilities and likely to increase with an aging population
- Unique housing need that varies by disability
  - Physically accessible housing
  - Access to affordable unit
  - Access to housing with needed services
  - Access to housing without discrimination

# People Experiencing Homelessness

## Unsheltered Homelessness

Homelessness is a regional issue, but Tualatin has a role to play.



Source: Washington County, Point-in-Time Counts.



# Takeaway: Housing Need for People Experiencing Homelessness

- People experiencing homelessness are disproportionately affected by lack of affordable housing
  - 307 people were identified as homeless and unsheltered in Washington County (2020).
- Unique housing need that varies by reason for homelessness
  - Emergency assistance, including rent support
  - Permanent supportive housing, with services
  - Access to an affordable unit



# Developing the Strategies

# Factors that Influence Housing Development

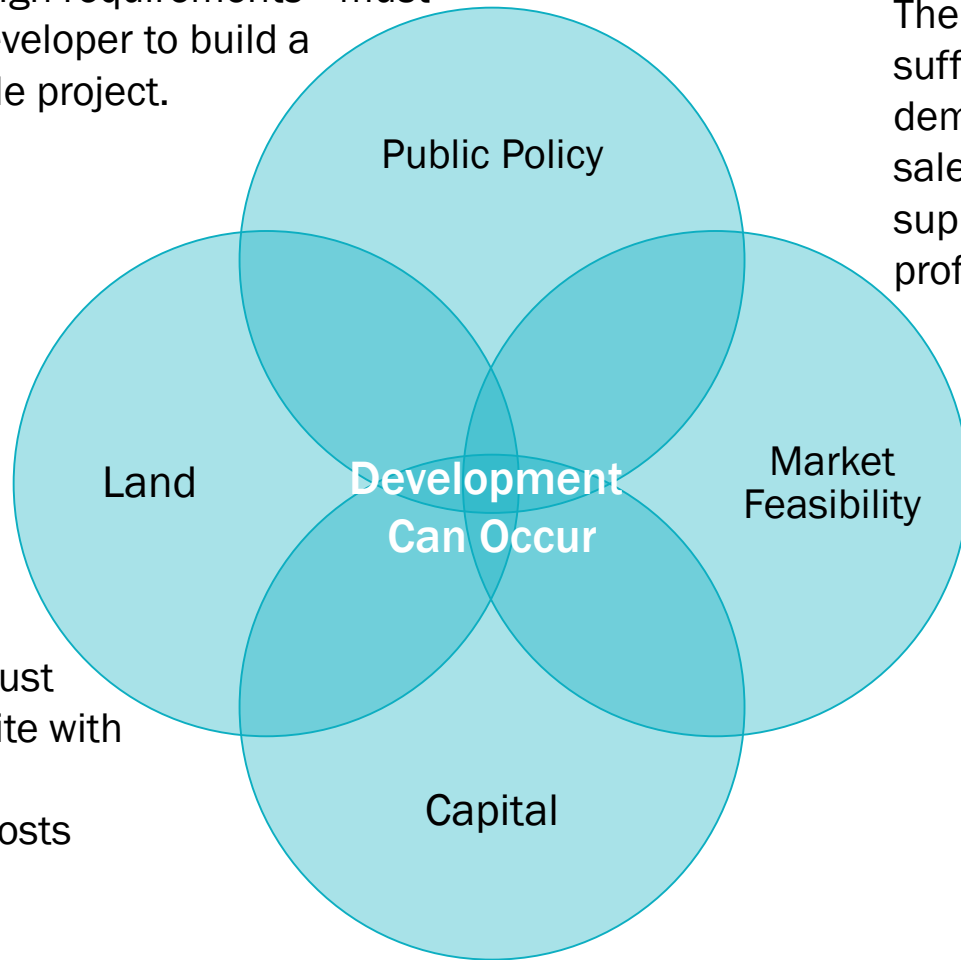
Policy—including zoning, density, and design requirements— must allow developer to build a profitable project.

There must be sufficient demand (rents, sales prices) to support a profitable project

Tualatin can directly influence public policy, land, and infrastructure.

Tualatin may have limited influence on market feasibility

Developer must control the site with reasonable acquisition costs



Developer must be able to access resources for investment (e.g., equity investment, bank loans)

# Evaluating the Strategies

Considerations  
for each potential  
strategy

- What housing need does it meet?
- What is the City of Tualatin's role in implementation?
- Who are the implementation partners?
- What level of staff effort is required?
- What is the potential impact?
- What is the relative cost?
- What is the timeframe for implementation?

What outcomes  
will the strategies  
achieve together?

- Do they affirmatively further fair housing?
- Do they facilitate housing choice?
- Do they create opportunities for production of affordable rental housing and homeownership?
- Do they increase housing stability?
- Do they help provide housing options for people experiencing homelessness?
- Do they strive to meet statewide greenhouse gas emission reduction goals?

- For strategies identified in the final HPS, the City of Tualatin will:
  - Commit to implementation.
  - Be required to update DLCDC on implementation progress and be required to comment on its effectiveness in the future.
- Strategies not identified in the HPS may still be implemented, but the City of Tualatin will not be held to specific action by the State.

# Existing Strategies

- Prohibited single-family detached housing in most high-density zones in Tualatin.
- Allowed one or more ADUs in residential zones per lot.
- Applied density standards uniformly across zones that allow dwelling units on fee simple lots and on multifamily sites.
- Ensured decisions about housing is data-driven and focused on equitable outcomes.
- Removed open space/common amenity requirements for low density residential.
- Provided info to small, local developers to help them understand land use permitting processes and requirements.

# Broad Categories of Strategies

- Affordable Rental Housing Expansion: Expand affordable rental housing stock to include long-term affordable housing.
- Preservation of Affordable Housing : Preservation of affordable housing stock to prevent displacement of existing residents.
- Houselessness and Housing Stabilization: Prevent and reduce houselessness.
- Workforce Housing Expansion: Expand development of workforce owner and renter housing to increase the jobs-housing balance.
- Housing for People with Special Needs: Expand development of housing for people with special needs and seniors.

# Broad Categories of Strategies (continued)

- Housing for Diverse Populations: Housing to meet the cultural needs of diverse populations.
- Social and Racial Equity: Develop a lens for housing policy decision-making through consideration of social and racial equity.
- Regulatory and Zoning Change: Greater availability of a diversity of housing types.
- Mixed Use Development and Redevelopment: Encourage development and redevelopment of housing in commercial areas.
- Transportation and Public Infrastructure: Plan for and develop transportation and public infrastructure to support housing development.



# Discussion Questions

- Are there any key housing needs missing from the PowerPoint? Are there any missing groups or people with special housing needs?
- Do you have feedback on the broad categories of strategies in the PowerPoint? Are there any additional categories of broad strategies that the City should consider be included?
- Are there measures, strategies, or actions that the City should consider that are not currently documented in the draft Memo "Existing Housing Measures and Potential New Measures"?
- Which strategy in the draft Memo do you most want to know more about?

- Continue to refine the measures and actions highlighted in the HPS
- Continue to interview housing producers

## **Mark your calendar!**

The next Planning Commission Meeting

focused on the HPS is on:

**February 18, 2021**

DATE: December 1, 2020  
TO: Tualatin Planning Commission  
CC: Steve Koper and Karen Perl Fox, City of Tualatin  
FROM: Beth Goodman, Sadie DiNatale, and Becky Hewitt, ECONorthwest  
SUBJECT: Tualatin's Existing Housing Measures and Potential New Measures

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The City of Tualatin completed a Housing Needs Analysis in 2019, as part of the Tualatin 2040 project. Tualatin was selected to be one of four cities in Oregon to develop a prototype Housing Production Strategy (HPS) by the Department of Land Conservation and Development, who contracted ECONorthwest to develop an HPS for Tualatin.<sup>1</sup>

An HPS is a report that provides additional information about housing needs, beyond the information in the Housing Needs Analysis, and proposes a short list of housing measures (or policies or strategies) to address Tualatin's housing needs. This memorandum presents preliminary draft measures that may be included in the HPS. These measures will be discussed at the December 10, 2020 Planning Commission Meeting. The measures will be refined, further developed, and evaluated throughout the project.

## Tualatin's Housing Measures and Gaps

This memorandum describes existing measures that Tualatin has implemented to support housing development and presents preliminary draft measures (or policies or strategies) that may be included in the HPS. This memorandum is one of three interim deliverables that will later become sections in the final Housing Production Strategy report. Tualatin's Planning Commission will discuss the findings of this memorandum at their first meeting of the project on December 10.

The two additional interim deliverables, which will be discussed at future meetings, are:

- **Memorandum providing additional evaluation and refinement of the selected, short-list of measures.** Tualatin's Planning Commission will discuss the findings of the memorandum on February 18, 2021.
- **Memorandum summarizing the information required for each measure.** Tualatin's Planning Commission will discuss the findings of the memorandum on March 18, 2021.

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<sup>1</sup> This project is funded by Oregon general fund dollars through the Department of Land Conservation and Development. The contents of this document do not necessarily reflect the views or policies of the State of Oregon.

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## Existing Measures, Policies, or Strategies that Address Tualatin's Housing Needs

This City of Tualatin has the following housing measures (or policies or strategies) currently in place to address Tualatin's housing needs. These measures include:

- Prohibiting single-family detached housing in most high-density zones in Tualatin.
- Allowing one or more accessory dwelling units (ADUs) in residential zones per lot.<sup>2</sup>
- Applying density standards uniformly across zones that allow dwelling units on fee simple lots and on multifamily sites.
- Ensuring decisions about what kind and how much housing goes where is data-driven and focused on equitable outcomes instead of the best outcomes for those with the most money and/or privilege.
- Removing open space/common amenity requirements for low density residential.
- Providing information to small, local developers to help them understand land use permitting processes and to give developers a sense of clarity and certainty about the requirements so they can better provide smaller scale housing. Tualatin's existing measures generally focus on land use efficiency, such as allowing development of denser housing types, or measures to reduce development costs, such as removing open space requirements for some housing development. By and large, the types of policies that Tualatin has yet to adopt are policies to support:
  - Development of affordable rental housing and preservation of affordable housing stock to prevent displacement of existing residents
  - Prevention and reduction of homelessness
  - Expansion of workforce owner and rental housing to increase the jobs housing balance
  - Expansion of housing for people with special needs and seniors and development of housing to meet the cultural needs of diverse populations
  - Greater availability of diverse housing types through regulatory or zoning changes, including mixed-use housing and redevelopment in commercial areas
  - Planning for and developing transportation and public infrastructure to support affordable housing, workforce housing and mixed-use housing development.

The following section presents a list of preliminary measures to address these gaps in Tualatin's housing policies.

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<sup>2</sup> Although, Tualatin's ADU provisions are not yet compliant in regard to HB 2001 off-street parking requirements.

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## Potential Measures, Policies, or Strategies for the Housing Production Strategy

- Preservation of Affordable Housing: Preservation of affordable housing stock to prevent displacement of existing residents
- Houselessness and Housing Stabilization: Prevent and reduce houselessness
- Workforce Housing Expansion: Expand development of workforce owner and renter housing to increase the jobs-housing balance
- Housing for People with Special Needs: Expand development of housing for people with special needs and seniors
- Housing for Diverse Populations: Housing to meet the cultural needs of diverse populations
- Social and Racial Equity: Develop a lens for housing policy decision-making through consideration of social and racial equity
- Regulatory and Zoning Change: Greater availability of a diversity of housing types
- Mixed Use Development and Redevelopment: Encourage development and redevelopment of housing in commercial areas
- Transportation and Public Infrastructure: Plan for and develop transportation and public infrastructure to support housing development including affordable housing, workforce housing and mixed-use housing development.

Exhibit 1 provides a list of potential measures (or policies or strategies) for inclusion in the Housing Production Strategy. These measures range from policies to adopt to programs to implement in support of housing. These measures represent a starting point for strategies to consider for inclusion in the Housing Production Strategy report. In the next months, ECONorthwest will work with City staff to refine the measures and begin the evaluation of the measures, considering information for each measure such as: the level of housing need (by income) each measure addresses, the role of the city for each measure, partners needed for each measure, the potential impact of the measure, the potential costs of the measure, and other criteria. In upcoming meetings for the project, we will present a revised list of measures, with that evaluation framework in place.

The measures are grouped according to the type of housing need they address, in the following groupings:

- Affordable Rental Housing Expansion: Expand affordable rental housing stock to include long-term affordable housing
- Preservation of Affordable Housing: Preservation of affordable housing stock to prevent displacement of existing residents
- Houselessness and Housing Stabilization: Prevent and reduce houselessness
- Workforce Housing Expansion: Expand development of workforce owner and renter housing to increase the jobs-housing balance
- Housing for People with Special Needs: Expand development of housing for people with special needs and seniors
- Housing for Diverse Populations: Housing to meet the cultural needs of diverse populations
- Social and Racial Equity: Develop a lens for housing policy decision-making through consideration of social and racial equity
- Regulatory and Zoning Change: Greater availability of a diversity of housing types
- Mixed Use Development and Redevelopment: Encourage development and redevelopment of housing in commercial areas
- Transportation and Public Infrastructure: Plan for and develop transportation and public infrastructure to support housing development including affordable housing, workforce housing and mixed-use housing development.

Exhibit 1. Potential Measures for inclusion in the Housing Production Strategy

Measure	Description
<b>Affordable Rental Housing Expansion: Expand affordable rental housing stock to include long-term affordable housing</b>	
<p>Adopt a Policy to Support Expansion of Development of Affordable Housing</p>	<p>Strongly prioritize development of affordable housing for households with incomes of 60% of MFI or below (\$55,200 or less for a family of four) and that aim to leverage funds to fill the gap. Take advantage of Federal, State, Metro, local, and other sources of funding to support development of affordable housing when they are available. As part of this strategy, ensure that city policies reflect a have a pro-affordable housing agenda for development of housing for rental and homeownership.</p> <p>Forming partnerships with other public agencies, nonprofit developers and service providers, and private developers and others involved with affordable housing development will be essential to expanding development of affordable housing.</p> <p>Affordable housing policies should maximize outcomes for development quality, design beautification, long-term sustainability and healthy outcomes.</p>
<p>Land for Affordable Housing Development</p>	<p>This strategy can be implemented in several ways: through the city playing a proactive role in parcel assembly for affordable housing sites or through use of excess or surplus city-owned property. The city could identify land where affordable housing development can occur by identifying excess or surplus publicly owned land, such as land in city-ownership, where affordable housing may be appropriate. The City may need to periodically review its list of city-owned properties to determine if other properties are appropriate for affordable housing development. The City should develop a policy to offer affordable housing developers the right of first refusal for purchasing city-owned land for affordable housing.</p> <p>The City can work with other public agencies to identify excess or surplus properties that may be appropriate for affordable housing development. In addition, Tualatin may consider reaching out to faith-based organizations to see if they have excess or surplus land they would consider having used for affordable housing development.</p> <p>The City can also assist in assembly of privately-owned parcels into single parcels where affordable housing development can occur. This may require the City to purchase smaller privately-owned parcels to assemble into a larger parcel. The City could sell, lease or possibly donate the parcel to an affordable housing developer to produce affordable housing.</p> <p>The City could consider forming a development partnership or collaboration with nonprofit and/or private affordable housing developers or other appropriate entities, such as an agency.</p>
<p>Evaluate Tax Exemptions</p>	<p>Evaluate tax exemption options to support development of affordable housing or mixed-use housing.</p>

Measure	Description
Evaluate Changes to SDCs and TDTs	Evaluate options for potential changes to SDCs and TDTs to support development of affordable housing. This strategy could include reducing, deferring, and/or financing System Development Charges (SDCs) at a low interest rate for needed housing types, reducing development costs. However, Tualatin has limited control of SDCs and collects on behalf of other service districts and providers. Parks is the City's only "city-only" SDC, which recently went through an extensive review.
Evaluate Construction Excise Tax (CET)	Evaluate implementation of a CET, starting with an analysis of the financial capacity of a CET. A CET could be levied on commercial, industrial, and residential development. Tualatin has limited land for new residential development. If a CET is levied on commercial or industrial development, the City would need to provide a clear use for funds and a nexus to housing for employees at businesses in Tualatin. This strategy would require discussions with major employers and the business community in Tualatin.
Evaluate a New Urban Renewal District with TIF Set Aside for Affordable Housing and Mixed Income Housing	<p>Continue the evaluation of establishing a new urban renewal district and consider including urban renewal projects that support development of multifamily housing affordable for households earning 60% of MFI or below and Mixed Income Housing that includes Affordable Housing. The evaluation of new urban renewal district is underway in Tualatin.</p> <p>As part of the urban renewal district, Tualatin could create a TIF set-aside for affordable housing development programs within designated Urban Renewal Areas (URAs). Target could be to begin setting aside funds for affordable housing projects as a medium-term action, over the next 5 years or so. For example: Portland City Council designates 45% of the gross amount of TIF for designated housing purposes (rental housing for households earning 60% of MFI or below and homeownership for households 80% of MFI or below. Tualatin is considering a TIF Set Aside in its current discussion of Urban Renewal District(s).</p>
Housing Trust Funds	<p>Housing Trust Funds are a flexible source of funding that can be used to support a variety of affordable housing activities. Because they are created and administered at the city, county, region, or state level, housing trust funds are not subject to the restrictions of federal subsidy programs and therefore can be designed specifically to address local priorities and needs. Tualatin would need to identify funding source(s) for a housing trust fund, which could include the city's general fund or other sources of funding.</p> <p>The housing trust fund could also include funds to preserve affordable housing, such as supporting acquisition or rehabilitation of naturally occurring affordable housing and regulated affordable housing nearing the end of its compliance period.</p>



Measure	Description
Encourage Diverse Rental Housing Types	Evaluate allowing and supporting development of other housing types in Tualatin that provide affordable housing, such as units designed for multiple unrelated living in the same dwelling with shared kitchen and bathrooms, tiny homes (dwelling units between 100 and 500 square feet), and other innovative small housing types. These small units are strongly needed to meet identified "Needed Housing" particularly for extremely low and very low income.
Flexible Regulatory Concessions for Affordable Housing	Evaluate development codes and processes to identify opportunities to make it easier to develop and build affordable housing. This could include updating the modifications / variance process and requirements, including making allowing modification / variance processes for affordable housing to have a simpler review process than typical, such as not requiring hearings.
<b>Preservation of Affordable Housing: Preservation of affordable housing stock to prevent displacement of existing residents</b>	
Preserving Low-Cost Rental Housing to Mitigate Displacement	Preventing displacement and preserving "naturally occurring" affordable housing through acquisition, low-interest loans/revolving loan fund for preservation, and/or code enforcement. Tualatin can identify partners with shared interests in housing in Tualatin and could lead to more low-cost renter housing. Identifying local or regional funding sources will be key. Tualatin's urban renewal program could include funds for rehabilitation and stabilization of existing low-cost rental housing.
<b>Houselessness and Housing Stabilization: Prevent and reduce houselessness</b>	
Provide Rental Assistance	Identify opportunities to provide rental assistance. The City is currently exploring an informal partnership or collaboration with the Community Action Agency on rental assistance and prevention of houselessness.
Develop Housing Options and Services to Address and Prevent Houselessness	The City of Tualatin should partner with agencies and nonprofit organizations that provide housing and services to people experiencing houselessness. This could include: (1) working with partners to support development of an emergency shelter for people experiencing houselessness, (2) working with service providers who provide rapid re-housing services to exit houselessness, (3) work with nonprofit housing developers and service providers to develop an application to the State for funding for permanent supportive housing, and (4) work with partners to support transitional housing development.

Measure	Description
<b>Workforce Housing Expansion: Expand development of workforce owner and renter housing to increase the jobs-housing balance</b>	
Plan for Workforce Housing Affordable to Workers in Tualatin	Ensure the City includes housing planning for workforce housing that is affordable to people who work at businesses in Tualatin, such as households earning between 61% to 80% median family income (\$55,201 to \$74,000 for a family of four).
Employer Assisted Housing	Identify opportunities to partner with or support employers who are interested in developing an employer-assisted housing program.
Participate in Land Bank	Determine whether to participate in a land bank, which can help communities provide land for workforce housing development. Tualatin, however, has limited land availability at this time. This tool may work better through use of existing public or City-owned land or as land becomes available through redevelopment. The City could take a proactive role in land assembly, either public or purchase of private lands.
Affordable Homeownership	<p>This strategy has two parts: (1) homeownership education and (2) identifying barriers to development of affordable homeownership opportunities. Tualatin can partner with nonprofit organizations that offer homeownership education to low- and middle-income households. The City's role in the partnership may be to promote the educational opportunities and refer people in need of homeownership education to the nonprofit.</p> <p>Tualatin should develop a comprehensive review of the impediments to the development of homeownership opportunities and actionable steps to remove those impediments.</p>
Encourage Diverse Housing Types for Affordable Homeownership	Evaluate allowing and supporting development of other housing types in Tualatin that provide affordable homeownership opportunities, such as small homes, skinny homes, very small homes (dwelling units between 100 and 500 square feet), reuse of cargo containers for housing, and other innovative small housing types. These small units can help meet identified needs for workforce affordable homeownership opportunities.

Measure	Description
<b>Housing for People with Special Needs: Expand development of housing for people with special needs and seniors</b>	
Accessible Design	Provide incentives in the development code to increase the number of units designed to meet Universal Design, Lifelong Housing Certification, and other similar standards. This strategy could include pre-approved plan sets (e.g. SF and townhomes with barrier-free / universal design), within the context of ADA and FHA rules.
<b>Housing for Diverse Populations: Housing to meet the cultural needs of diverse populations</b>	
Encourage Diverse Housing Types in High Opportunity Neighborhoods	Enable developments that support multiple unit sizes, types, and tenure options to promote diverse housing options in high-opportunity neighborhoods, with a goal of reversing historical patterns of racial, ethnic, cultural and socio-economic exclusion. Use an analysis of “Access to Opportunity” to decide which zones or locations (via zoning overlay) to determine where this is appropriate. The purpose of this strategy is to promote access to opportunity (e.g., high performing schools, multiple transportation options, services, etc.) to households with a range of backgrounds and incomes. This strategy may work well with the incentives for development of affordable and workforce housing described in this strategy.
<b>Social and Racial Equity: Develop a lens for housing policy decision-making through consideration of social and racial equity</b>	
Implementation of all Housing Policies through a Lens of Social and Racial Equity and Inclusion	Develop a social and racial equity and inclusion lens to evaluate all housing policies.
Adopt Affirmatively Furthering Fair Housing as a Housing Policy in Comprehensive Plan	<p>Amend the comprehensive plan to explicitly make Affirmatively Furthering Fair Housing a Housing Policy. This strategy is important to prevent and address housing discrimination. Tualatin may consider flexibility in expressly adopting federal guidance, which may change, in a long-term planning document. Tualatin may consider whether the Comp Plan which is implemented through the Development Code is the appropriate home for policies not implemented in that manner.</p> <p>A part of this policy will be ensuring there are opportunities for education about fair housing to residents, property owners, property managers, realtors, lenders and others involved with real estate transactions with access to Fair Housing information and referrals. Ensure that city staff know how to identify potential Fair Housing violations and make referrals to the Fair Housing Council of Oregon and state and local enforcement agencies. Partner with and fund Fair Housing Council of Oregon to provide periodic Fair Housing Audit Testing, customized outreach and education and other specialized services.</p>

Measure	Description
<b>Regulatory and Zoning Change: Greater availability of a diversity of housing types</b>	
Increase Allowable Densities in High Density Zones	Evaluate increasing densities in the Residential High and Residential High Density / High Rise residential designations by allowing buildings that are five to eight stories tall. Ensure that these zones have appropriate minimum densities to ensure that land in these zones is used for higher density housing. As part of this change, the City might evaluate merging the High Density zone and the High Density / High Rise zones into one zone.
Up-zone Land	Evaluate opportunities to re-zone Residential Low Density and Residential Medium Low-Density residential land for higher-density housing in selected areas.
Reduce Off-Street Parking Requirements	Evaluate off-street parking requirements for multifamily housing to identify opportunities for reduction in parking requirements. Tualatin could consider allowing reduction of parking requirements near transit and for affordable housing with tenants who generally own fewer cars, like seniors. In addition, the City should consider allowing public on-street parking in ROW within a certain radius to count towards off-street parking requirements.
Small Dwelling Unit Developments	<p>Tualatin should consider small scale units with affordable housing income limits, that is not part of HB 2001 by allowing land division where small lots or parcels are created below the standard lot/parcel size for dwelling units that are limited in size. Tualatin should consider this in the context of new cottage cluster regulations because this development type would be similar to cottage cluster development. This would involve calculating density differently for the dwelling units due to their limited size. For example:</p> <ul style="list-style-type: none"> <li>a. Dwelling units 600 square feet or smaller: 0.25 of a dwelling unit.</li> <li>b. Dwelling units 601 to 1,200 square feet: 0.50 of a dwelling unit.</li> </ul>
Expedite Permitting for Affordable Rental Housing and Affordable Homeownership	<p>Expedited permitting will help to reduce costs and financial vulnerabilities of development and construction of affordable housing.</p> <p>This strategy would prioritize review of development proposed for affordable rental housing at 0-60% of MFI and below and Affordable Homeownership at 80% of MFI and below.</p> <p>Consider projects with direct or indirect funding from local government as essential and projects with long-term affordability covenants through tax abatement or inclusionary requirements as high priority.</p> <p>Assigning a designated staff person to shepherd these projects through the development and construction process in order to expedite them will be essential.</p>

Measure	Description
Providing Information and Education to Developers of Needed Housing	The City informally provides information to small, local developers to help them understand land use permitting processes and to give developers a sense of clarity and certainty about the requirements so they can better provide smaller scale housing at an affordable level. The City could create a formal process to provide this information to include all housing developers, especially aimed at those that can produce the identified "Needed Housing." The City could promote development of "Needed Housing" through a City housing program with variety of venues such as developers' roundtable, informational sessions with developers, promotion of incentives and funding resources and more.
Evaluate Staff Capacity	Determine whether the City will need to add staff to implement the policies in the housing production strategy.
Align Lot Division Density with Zoning Density	Identify and resolve conflicting regulations that can cause unintentional reductions in density, such as the density allowance in the code not matching the density allowance through lot division is considered when a developer would like to create for-sale housing on fee-simple lots. In Tualatin generally, zones that allow dwelling units on fee simple lots and on multifamily sites apply density standards uniformly.
<b>Mixed-Use Development and Redevelopment: Encourage development and redevelopment of housing in commercial areas</b>	
Rezone Land for Mixed-Uses	Identify opportunities to rezone industrial or commercial land for mixed-use that includes employment and residential uses.
Identify Underutilized Commercial Areas Ripe for Mixed-Use Redevelopment	Identify opportunities for redevelopment of mixed-use districts and initiate an area planning process to guide redevelopment. This may be connected with newly forming urban renewal district(s) or may be other commercial areas.
Conversion of Commercial Space to Residential Uses	Identify and evaluate opportunities for housing above ground floor retail and change the development code to allow more housing above ground floor retail in commercial areas. In addition, consider opportunities for conversion of some ground floor retail to allow housing on the ground floor

Measure	Description
<b>Transportation and Public Infrastructure: Plan for and develop transportation and public infrastructure to support affordable housing, workforce housing and mixed-use housing.</b>	
Increase Density in Town Center, near Transit Stations and Regional Multi-Use Trails	The City can consider adopting policies to increase near transit stations, with higher levels of density near high capacity/high frequency stations, then stepping back into residential areas, as well as automatically up zone land near transit stations based on transportation corridor classifications so that wider ROWs get more flexibility in land use by right. The policy can (and should) be put in place when the transit station location is determined, before transit is developed. Tualatin should consider this housing-transportation strategy near Town Center area, near existing WES Station and future WES substations.
Identify Opportunities for Transit-Oriented Development and Communities	The City can provide financial incentives to developers to create transit-oriented communities. Funding can be used for site acquisition, infrastructure projects and residential/mixed-use projects . Metro TOD Grants could be applied for as funding resource. This strategy could be connected with the strategies about Affordable Rental Housing Expansion.
Capital Improvements Programming (CIP) and Public Facility Planning	<p>The City can prioritize work in a Capital Improvements Programming (CIP) and public facilities planning so that projects are constructed sooner to support development of affordable or workforce housing, coordinating housing planning with CIP work to prioritize those projects that would support development (e.g. new water line, sewer pumping station). This planning can make it easier to understand infrastructure costs and allow for planning for more development capacity in areas for higher density housing.</p> <p>Tualatin could consider this strategy as part of future urban renewal planning, which traditionally focuses on employment uses. Identifying where infrastructure constraints are or could be a barrier to denser housing development would be a first step.</p>

**State of Oregon**

**Contract for Services**

**Housing Needs Technical Assistance Project  
Contract 19122**

**Recitals**

This contract was procured using a public procurement process. Agency Department of Land and Conservation Development issued Request for Proposals (RFP Number **660-1045-20**) seeking proposals for Services and Deliverables as described in this Contract.

Consultant ECONorthwest submitted its proposal on April 23, 2020. Following an evaluation of proposals submitted, Consultant's proposal was selected for award. This Contract is entered into as a result of that successful proposal. Therefore, DLCD and Consultant agree as follows:

**Contract**

This Contract for Services (this "Contract") is by and between the State of Oregon, acting through its **Department of Land Conservation and Development** (Agency), and **ECONorthwest** (Consultant), and is effective as of the Effective Date.

Consultant's Contract Administrator for this Contract is:

**Cindy O'Connell, Controller**  
**ECONorthwest**  
**222 SW Columbia Street, Suite 1600**  
**Portland, OR 97201**  
**503-222-6060**  
oconnell@econw.com

Agency's Contract Administrator for this Contract is:

**Jeff Hunt – Contracts Coordinator**  
**Administrative Services Division**  
**635 Capitol Street NE, Suite 150**  
**Salem, Oregon 97301**  
**Phone: 503-934-0029**  
Jeff.hunt@state.or.us

Either party may change its Contract Administrator by providing the other notice in compliance with Section 17.6 of this Contract. Agency has authority to enter this Contract pursuant to House Bill 2001 (2019).

**1. Contract Term.**

The "Effective Date" of this Contract is the date this Contract has been fully executed by each party and, approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Contract terminates on **June 15, 2021**. The termination of this Contract will not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Consultant that has not been cured.

**2. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence:

**2.1.** This Contract less all Exhibits;

- 2.2. Exhibit A (the Statement of Work);
- 2.3. Exhibit B (Required Insurance); and
- 2.4. Exhibit C (Independent Consultant Certification)

The foregoing documents and Exhibits are attached hereto and made a part of the Contract by this reference.

### 3. Services and Deliverables.

**3.1. Performance of Services.** Consultant shall perform the services (the “Services”) set forth in Exhibit A, the Statement of Work (the “Statement of Work”). The Statement of Work includes the delivery schedule for the Services. Consultant shall perform the Services in accordance with the terms and conditions of this Contract.

**3.2. Submission and Acceptance of Deliverables.** When the Statement of Work requires Consultant to deliver Deliverables, then Consultant shall deliver Deliverables that comply with the requirements forth in this Contract, including the Statement of Work. Consultant shall provide written notice to Agency upon delivery of a completed Deliverables. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, Agency will determine whether the Deliverables have the characteristics and otherwise meets all criteria set forth in the Statement of Work, which Agency shall do in consultation with the relevant entity to whom Consultant is providing Deliverables. If Agency determines that the Deliverables have the characteristics and all criteria set forth in the Statement of Work in all material respects, Agency will notify Consultant in writing of acceptance of the Deliverables.

**3.3. Rejection of Services or Deliverables; Corrections.** If Agency determines that a Deliverables does not have the characteristics or otherwise meet all criteria set forth in this Contracting, including the Statement of Work in all material respects or that Services are not in compliance with all terms and conditions of this Contract, Agency will notify Consultant in writing of Agency’s rejection of the Deliverables or Services, and describe in reasonable detail in such notice the Agency’s basis for rejection of the Deliverables or Services. Upon receipt of notice of non-acceptance, Consultant shall, within a 15 business day period, modify or improve the Deliverables or Services at Consultant’s sole expense so that the Deliverables has the characteristics and meet the criteria described in this Contract, including the Statement of Work and meets, in all material respects or that Services are in compliance with all terms and conditions of this Contract, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverables to Agency. Agency will thereafter review the modified or improved Deliverables or Services within 15 business days of receipt of the Consultant's delivery of the Deliverables or Services. Failure of the Deliverables to have the characteristics or meet in all material respects the criteria set forth in this Contract, including the Statement of Work after the second submission will constitute a default by Consultant. Failure of Services to comply with all terms and conditions of this Contract after the second provision will constitute a default by Consultant. In the event of such default, Agency may either, (i) notify Consultant of such default and instruct Consultant to modify or improve the Deliverables or Services as set forth in this Section, or (ii) notify Consultant of such default and pursue its remedies for default provided for by law or the terms of this Contract.

### 4. Compensation.

**4.1. Not to Exceed Compensation.** The maximum, not-to-exceed compensation payable to Consultant under this Contract, which includes any and all payments under this Contract for all work outlined in the Statement of Work, is **\$228,005.00**. Agency will not pay Consultant any amount in excess of the not-to-



exceed compensation of this Contract and will not pay for Services performed or Deliverables provided before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Consultant performs Services or provides Deliverables subject to the amendment.

**4.2. Payments.** Payments, including interim payments, to Consultant will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A. Overdue payments are subject to ORS 293.462.

**4.3. Invoices.** Consultant shall submit invoices to Agency as set forth in the Statement of Work to Agency's Contract Administrator. The invoices must describe all Services performed and Deliverables provided with particularity, including the dates Consultant performed the Services or provided the Deliverables for which it is requesting payment, and by whom the Services were performed or Deliverables. Agency will review invoices and either accept or reject the invoice within 30 days of receipt. An invoice shall only be rejected if the invoice fails to comply with this section 4.3 and the relevant provisions of the Statement of Work or if Agency determines that Consultant has not completed the Services or Deliverables included on the invoices as required under this Contract, including the statement of work. Agency will determine if Consultant has completed the Services or Deliverables by conferring with the relevant entity to whom Consultant providing the Services or Deliverables. If the invoice is accepted, agency will provide payment at that time.

**4.4. Expenses.** Agency will not pay for or reimburse any expenses incurred by Consultant during the completion of the Services or the provision of Deliverables.

**4.5. Funds Available and Authorized.** Consultant will not be compensated for Services performed or Deliverables provided under this Contract by any agency or department of the State of Oregon other than Agency. Agency believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within Agency's biennial appropriation or limitation. Consultant understands and agrees that Agency's payments under this Contract are contingent on Agency receiving appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

## **5. State Premises.**

**5.1.** Consultant and Consultant staff shall comply with all policies, rules, procedures, and regulations established by Agency and the State for access to and activities in and around premises controlled by Agency or any other agency of the State.

## **6. Independent Consultant; Responsibility For Taxes And Withholding.**

**6.1. Independent Consultant.** Consultant shall perform all Services and provide all Deliverables as an independent Consultant. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, Agency may not and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services and providing Deliverables.

**6.2. No Conflicts.** Consultant, by signature to this Contract, represents and warrants that Consultant's performance of the Services and provision of Deliverables under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules or regulations of any State of Oregon or federal agency for which Consultant currently performs work would prohibit Consultant from performing the Services or providing Deliverables under this Contract.

**6.3. Affiliation.** Consultant understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

**6.4. Taxes and Benefits.** Consultant is responsible for all federal, state, or other taxes applicable to compensation or payments paid to Consultant under this Contract, and, unless required by applicable law, Agency will not withhold from such compensation or payments any amount to cover Consultant's federal or state tax obligations. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under this Contract, except as a self-employed individual.

## **7. Subcontracts, Successors, and Assignments.**

**7.1. Subcontracts.** Consultant shall not enter into any subcontracts for any of the Services or Deliverables required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Consultant shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Consultant. Agency's consent to any subcontract does not relieve Consultant of any of its duties or obligations under this Contract.

**7.2. Successors and Assigns.** The provisions of this Contract are binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns, if any.

**7.3. No Assignment.** Consultant shall not assign or transfer any of its rights or delegate its obligations under this Contract without Agency's prior written consent.

## **8. Representations and Warranties.**

**8.1. Consultant's General Representations and Warranties.** Consultant represents and warrants to Agency that:

**8.1.1.** Consultant has the power and authority to enter into and perform this Contract;

**8.1.2.** This Contract, when executed and delivered, is a valid and binding obligation of Consultant enforceable in accordance with its terms;

**8.1.3.** Consultant shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services and provide the Deliverables;

**8.1.4.** Consultant prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or dishonesty; and

**8.1.5.** Consultant (to the best of Consultant's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date of this Contract, faithfully has complied with:

**8.1.5.1.** All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

**8.1.5.2.** Any tax provisions imposed by a political subdivision of this state that applied to Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant;

8.1.5.3. Any tax provisions imposed by a political subdivision of this State that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant;

8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; and

**8.1.6.** Consultant has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

## **8.2. Consultant's Performance Warranties.**

**8.2.1.** Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Consultant shall apply that skill and knowledge with care and diligence to perform the Services and provide the Deliverables in a professional manner and in accordance with the highest standards prevalent in Consultant's industry, trade, or profession;

**8.2.2.** The Services and each Deliverables delivered by Consultant pursuant to the Services will materially comply with any service descriptions, specifications, standards, and requirements set forth in this Contract;

**8.2.3.** Except as otherwise provided in this Contract (including Section 9), Consultant shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and

**8.2.4.** Except as otherwise set forth in this Contract, any subcontractors performing work for Consultant under this Contract have assigned all of their rights in the Deliverables to Consultant or Agency and no third party has any right, title or interest in any Deliverables supplied to Agency under this Contract.

**8.3. Warranties cumulative.** The warranties set forth in Section 8 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Contract.

## **9. Ownership of Work Product.**

**9.1. Definitions.** As used in this Section 9, and elsewhere in this Contract, the following terms have the meanings set forth below:

**9.1.1.** "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Services.

**9.1.2.** "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Consultant.

**9.1.3.** "Work Product" means everything that is originally made, conceived, discovered, or reduced to practice by Consultant or Consultant's subcontractor or agents (either alone or with others) pursuant to this Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein

(whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

- 9.2. Original Works.** All Work Product created by Consultant pursuant to the Services, including derivative works and compilations of Work Product, and whether or not such Work Product is considered a work made for hire or an employment to invent, is the exclusive property of Agency. Agency and Consultant agree that such Work Product is “work made for hire” of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not “work made for hire,” Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency’s reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Agency. Consultant forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 9.3. License in Consultant Intellectual Property.** In the event that a Deliverables delivered by Consultant under this Contract is or is a derivative work based on Consultant Intellectual Property, or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Consultant Intellectual Property employed in the Deliverables, and to authorize others to do the same on Agency’s behalf.
- 9.4. License in Third Party Intellectual Property.** In the event that a Deliverables delivered by Consultant under this Contract is or is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Consultant shall secure on the Agency’s behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Deliverables, and to authorize others to do the same on Agency’s behalf.
- 9.5. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Consultant any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Consultant Intellectual Property that is now owned or subsequently owned by Consultant.
- 9.6. Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.
- 9.7. Competing Services.** Subject to the provisions of this Section 9, and Consultant’s obligations with respect to Confidential Information, including as defined in Section 10, nothing in this Contract precludes or limits in any way the right of Consultant to: (i) provide services similar to those contemplated in this Contract, or consulting or other services of any kind or nature whatsoever to any individual or entity as Consultant in its sole discretion deems appropriate, or (ii) develop for Consultant or for others, Deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables delivered pursuant to this Contract. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop

during the course of performance under this Contract free of any use restriction or payment obligation to the other.

## **10. Confidential Information.**

**10.1. Confidential Information.** Consultant acknowledges that it and its employees, officers, directors, agents or subcontractors (collectively, “Consultant Staff”) may, in the course of performing the Services and providing Deliverables under this Contract, be exposed to or acquire information that is confidential to Agency or Agency’s clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Consultant or any Consultant Staff may come into contact with or that is obtained by Consultant or Consultant Staff in the performance of this Contract shall be considered for the purposes of this Contract the confidential information of Agency (“Confidential Information”). Consultant shall, and shall cause Consultant Staff to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by Consultant or Consultant Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Consultant’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by Consultant or Consultant Staff who can be shown to have had no access to the Confidential Information.

**10.2. Non-Disclosure.** Consultant shall hold, and shall cause Consultant Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the performance of Services or provisions of Deliverables to Agency hereunder, and shall advise Consultant Staff of their obligations to keep Confidential Information confidential. Consultant shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise Agency immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Consultant will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Consultant against any such person. Consultant shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at Agency’s request, Consultant shall deliver to Agency all documents, papers, and other matter in Consultant’s possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Consultant may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services or provision of deliverables.

**10.3. Confidentiality Policies.** Consultant shall, upon Agency’s request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency’s review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Consultant will respond when a violation or possible violation occurs.

**10.4. Injunctive Relief.** Consultant acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

**10.5. Publicity.** Consultant agrees that it will not disclose the form, content or existence of this Contract or any Deliverables in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Consultant's services, without the prior written consent of Agency.

## **11. Indemnity by Consultant.**

**11.1. Claims.** Consultant shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs, and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Consultant or its officers, employees, subcontractors, or agents under this Contract, including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, infringement of intellectual property rights, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services or provision of Deliverables set forth in this Contract.

**11.2. Legal Counsel.** If Consultant is required to defend the State of Oregon or Agency or their officers, employees or agents under Section 11.1, then Consultant shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Consultant's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

**11.3. Damages to State Property and Employees.** Consultant is liable for all Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Consultant or its officers, employees, subcontractors, or agents under this Contract

**11.4.** CONSULTANT IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

## **12. Limitation of Liabilities.**

EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

**13. Insurance.** Consultant shall maintain insurance as set forth in Exhibit B.

**14. Default; Remedies; Termination.**

**14.1. Default by Consultant.** Consultant will be in default under this Contract if:

- 14.1.1.** Consultant institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- 14.1.2.** Consultant no longer holds a license or certificate that is required for Consultant to perform its obligations under the Contract and Consultant has not obtained such license or certificate within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or
- 14.1.3.** Consultant commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to perform the Services or provide the Deliverables under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Consultant's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice; or
- 14.1.4.** Consultant has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

**14.2. Agency's Remedies for Consultant's Default.** In the event Consultant is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- 14.2.1.** Termination of this Contract under Section 14.6.2; or
- 14.2.2.** Withholding all monies due for Services and Deliverables that Consultant has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or
- 14.2.3.** Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- 14.2.4.** Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Consultant, without penalty; or
- 14.2.5.** Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Consultant has been given notice if required by law.

**14.3. Remedies Cumulative.** The remedies set forth in Section 14.2 are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Consultant was not in default under

Sections 14.1, then Consultant will be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.6.1.

**14.4. Default by Agency.** Agency will be in default under this Contract if:

**14.4.1.** Agency fails to pay Consultant any amount required pursuant to the terms of this Contract, and Agency fails to cure such failure within 30 calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice; or

**14.4.2.** Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Consultant’s notice or such longer period as Consultant may specify in such notice.

**14.5. Consultant’s Remedies.** In the event Agency terminates this Contract under Section 14.6.1, or is in default under Section 14.4, and whether or not Consultant elects to exercise its right to terminate the Contract under Section 14.6.3, Consultant’s sole monetary remedy will be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced and authorized expenses incurred and interest, subject to ORS 293.462, and (ii) with respect to Deliverables-based Services, a claim for the sum designated for completing the Deliverables multiplied by the percentage of Services completed or Deliverables provided and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Consultant. In no event will Agency be liable to Consultant for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Consultant exceed the amount due to Consultant under this Section 14.5, Consultant shall pay immediately any excess to Agency upon written demand.

**14.6. Termination.**

**14.6.1. Agency’s Right to Terminate at its Discretion.** Agency may terminate this Contract:

14.6.1.1. Upon 30 calendar days’ prior written notice by Agency to Consultant;

14.6.1.2. Immediately upon written notice by Agency to Consultant if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Services or Deliverables; or

14.6.1.3. Immediately upon written notice by Agency to Consultant if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency’s purchase of the Services or Deliverables under this Contract is prohibited or Agency is prohibited from paying for such Services or Deliverables from the planned funding source.

**14.6.2. Agency’s Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Consultant, or at such later date as Agency may establish in such notice, if Consultant is in default under Section 14.1.

**14.6.3. Consultant’s Right to Terminate for Cause.** Consultant may terminate this Contract immediately upon written notice to Agency, or at such later date as Consultant may establish in such notice, if Agency is in default under Section 14.4.

**14.7. Return of Property.** Upon termination of this Contract for any reason whatsoever, Consultant shall immediately deliver to Agency all of Agency’s property (including without limitation any Services or



Deliverables for which Agency has made payment in whole or in part) that is in the possession or under the control of Consultant in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time.

**14.8. Effect of Termination.** Upon receiving a notice of termination of this Contract, Consultant shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Consultant shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Services and the Deliverables.

## **15. Compliance with Law.**

**15.1. Compliance with Law Generally.** Consultant shall comply, and cause all subcontractors to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract and the performance of the Services or provision of Deliverables. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Consultant's compliance with applicable the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Consultant shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as defined in ORS 279A.010(1)(ii)).

### **15.2. Compliance with Oregon Tax Laws.**

**15.2.1.** Consultant shall, throughout the duration of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes the tax laws described in Section 8.1.5.1 through 8.1.5.4.

**15.2.2.** Any violation of Section 15.2.1 constitutes a material breach of this Contract. Further, any violation of Consultant's warranty in Section 8.1.5 of this Contract that Consultant has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract. Any violation entitles Agency to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

15.2.2.1. Termination of this Contract, in whole or in part;

15.2.2.2. Exercise of the right of setoff, or garnishment if applicable, and withholding of amounts otherwise due and owing to Consultant without penalty; and

15.2.2.3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of Consultant's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services or Deliverables.

**15.2.3.** These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**15.3. Compliance with Federal Law.** Consultant shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit D, which is attached and incorporated into this Contract by this reference.

**15.4. Pay Equity.** As required by ORS 279B.235, Consultant shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Consultant's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Consultant's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Consultant may not prohibit any of Consultant's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Consultant may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

## **16. Governing Law; Venue and Jurisdiction.**

**16.1. Governing Law.** This Contract is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

**16.2. Venue and Jurisdiction.** Any claim, action, suit or proceeding between Agency (or any other agency or department of the State of Oregon) and Consultant that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONSULTANT, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.

## **17. Miscellaneous Provisions.**

**17.1. Records Maintenance; Access.** Consultant shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Consultant, whether in paper, electronic or other form, that are pertinent to this Contract ("Records") in such a manner as to clearly document Consultant's performance. Consultant acknowledges and agrees that

Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other Records that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such financial records and other Records for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

- 17.2. Foreign Consultant.** If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services or provide Deliverables under this Contract in the State of Oregon prior to entering into this Contract.
- 17.3. Force Majeure.** Neither Agency nor Consultant may be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Consultant, respectively. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 17.4. Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 17.4, and provisions regarding Contract definitions, warranties and liabilities, independent Consultant status and taxes and withholding, maximum compensation, Consultant's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Consultant's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
- 17.5. Time is of the Essence.** Consultant agrees that time is of the essence under this Contract.
- 17.6. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, or mailing the same, postage prepaid, to Consultant or Agency at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means or by a confirmation for the person receiving the email that the email has been delivered to the intended email address.
- 17.7. No Third Party Beneficiaries.** Agency and Consultant are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons.
- 17.8. Severability.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions

will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

- 17.9. Merger Clause; Waiver.** This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract will bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.
- 17.10. Amendments.** The parties may amend this Contract by agreement to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the parties and has been approved as required by applicable law.
- 17.11. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.
- 17.12. Oregon False Claims Act.** Consultant acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Consultant pertaining to this Contract, including the procurement process relating to this Contract that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Consultant. Consultant understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.
- 17.13. Certifications.** The individual signing on behalf of Consultant hereby:
- 17.13.1.** Certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) Consultant is not subject to backup withholding because (i) Consultant is exempt from backup withholding, (ii) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, that Consultant is not in violation of any Oregon tax laws and that for a period of no fewer than six calendar years preceding the Effective Date of this Contract, Consultant faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant; (iii) any tax provisions imposed by a political subdivision of this state that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax

laws or provisions; (c) Consultant is an independent Consultant as defined in ORS 670.600; and (d) the supplied Consultant tax identification numbers are true and accurate;

**17.13.2.** Certifies that, to the best of the undersigned’s knowledge, Consultant has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;

**17.13.3.** Certifies that Consultant has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Consultant agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term.

**17.13.4.** Certifies that the information provided on the attached Exhibit C, Independent Consultant Certification, is true and correct as of the Effective Date; and

**17.13.5.** Certifies that Consultant and Consultant’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>.

**[SIGNATURE BLOCKS]**

**CONSULTANT**

**ECO Northwest**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF OREGON** by and through its Agency **Department of Land Conservation and Development:**

By \_\_\_\_\_

Jim Rue, Director

Date: \_\_\_\_\_

**Exhibit A**

**Statement of Work**

**(6) CITY OF TUALATIN HPS**

A. Overview, Goals, and Objectives.

Consultant will develop a Housing Production Strategy (HPS) for the City of Tualatin (referred to as the City in this section (6)). The HPS will be informed by recently completed work on the City’s Housing Capacity Analysis (HCA) and the Tualatin Housing Strategy.

B. Deliverables, Delivery Schedule, and Payment.

1. Tasks and Products.

**Task 1: Project Kickoff**

Consultant shall hold a meeting with City to kick off the project with City. Consultant will contact City via conference call, or in person to inquire about establishing project expectations and familiarize themselves with city-specific concerns.

At the project kick off, Consultant will obtain necessary information and background from City to familiarize Consultant with local conditions and with City’s planning documents.

Consultant will also use the kick off to confirm the objectives of the project laid out in this Contract with the City, refine the project schedule established in this Contract with City (meaning add more detail as necessary to the established schedule), and provide necessary information to City to allow City to prepare for the Project.

***Task 1 Consultant Deliverables:***

- Summary of major tasks and action items for the project; and
- Proposed Project schedule.

**Task 2: Contextualized Housing Needs**

**Data Collection and Analysis**

Consultant will gather relevant data from the City’s Consolidated Plan, HCA, Regional Housing Capacity Analysis, and other available sources as needed for the HPS to describe current and future housing needs in the context of population and market trends. The City will provide Consultant access to all relevant available local data. The analysis of contextualized housing needs will include:

- Socio-economic and demographic trends of a jurisdiction’s population, disaggregated by race to the extent possible with available data;
- Market conditions affecting the provision of needed housing;
- Existing and expected barriers to the development of needed housing;
- Housing need for those experiencing homelessness, using the best available data;
- Percentage of Rent Burdened Households;

- Housing by Tenure (owner vs renter);
- Percentage of housing stock that is market rate vs. subsidized; and
- Units that are in the development pipeline by housing type;

The analysis of contextualized housing needs will also draw on information gathered through engagement with housing consumers, including underrepresented communities.

### **Outreach and Engagement**

Consultant will help plan engagement with housing consumers, including direct outreach to individuals through interviews, focus groups, or other means; contacting community-based organizations and service providers to connect with those they serve; and/or hosting events (virtual or in-person). This engagement will prioritize underrepresented communities within the City, including renters, low-income households, Hispanic/Latinx residents, other racial and ethnic minorities and immigrant or refugee communities, veterans, people with disabilities, seniors, agricultural workers, and formerly and currently homeless people. The engagement efforts will build from past engagement with the City’s Diversity Task Force and be coordinated with the event(s) required under HB4006 for severely rent burdened communities.

Due to the COVID-19 pandemic, engagement will seek to prioritize outreach to underrepresented groups to the extent reasonably and safely possible at this time within the limited engagement timeframe and resources of this project, and will emphasize outreach through agencies or non-profit groups that represent or work with underrepresented communities. While there will be a good faith effort around outreach generally, and particularly to under-served communities, it is understood that the current situation (with the COVID-19 pandemic) presents unique barriers to engagement. In addition, outreach and engagement discussions are likely to occur via videoconference, teleconference, or telephone calls, rather than in-person.

Consultant will help plan for the engagement, including helping to define the questions and topics for the outreach and methods to solicit input.

### **Summary Document**

Following data analysis and synthesis of outreach, Consultant will produce a summary of contextualized housing needs. While this will initially be produced as a stand-alone memorandum, it will later become a section of the HPS. Consultant will present the draft to the City’s Advisory Committee and make it available for public comment. (This is assumed to be presented at one of the committee meetings listed in Task 3, and not its own Advisory Committee meeting.)

This task will begin immediately following the kick-off and continue through the process of evaluating strategies.

#### ***Task 2 Consultant Deliverables:***

- Outline (via email) of suggested questions and topics for outreach Meeting (via teleconference) with staff to plan for engagement with housing consumers; and
- Contextualized Housing Needs memorandum.

### **Task 3: Strategies to Accommodate Future Housing Need**

#### **Summary of Existing Measures and Past Recommendations**

Consultant will review and provide input to the City on a City provided summary of measures already adopted by the City that promote the development of needed housing, and existing practices that affirmatively further fair

housing, link housing to transportation, provide access in Opportunity Areas, address equitable distribution of services, and create opportunities for rental housing and homeownership as those terms and requirements are defined in the final rules and state guidance for the HPS. The City will identify and provide all available information about existing relevant measures.

### **Gap Review**

Based on the Consultant and City evaluation of contextualized housing needs and the summary of the City's existing measures, Consultant will identify gaps where identified housing needs are not being met by the private market, and where there is inadequate public support to fully meet the identified needs. Consultant will review the list of strategies identified in the City's HCA produced in 2019 against the identified gaps to evaluate how well the strategies identified in the HCA address the contextualized housing needs, and where additional strategies may be needed. This evaluation will be qualitative rather than quantitative. In other words, it is not a numerical comparison of units needed of a specific type to units being produced through existing measures, but rather an assessment of whether the City's existing measures and previously identified strategies address the relevant needs where greater public intervention is needed.

Based on the identified gaps, Consultant will work with the City to identify any additional strategies needed to supplement those previously identified. Consultant will combine information on existing measures, previously identified strategies, and possible additional strategies to more fully address contextualized housing needs in a memorandum to share with the City Advisory Committee along with the Contextualized Housing Needs memorandum.

### **Strategy Refinement**

Consultant will work with the City and the City Advisory Committee to select strategies that are promising for near- to mid-term implementation and that would benefit from additional consideration to refine and provide additional guidance about how the strategy might best be implemented in the City. Consultant will provide additional information and qualitative and/or quantitative evaluation of up to five strategies. The purpose of this evaluation is to inform whether the City should include them in the HPS, and how (e.g. implementation considerations, pros and cons, or discussion of options in how to implement or apply the strategy).

### **Outreach and Engagement**

During the course of Task 3, Consultant will conduct outreach to housing producers and service providers to seek input on the potential housing strategies, focusing on those that have been identified as most promising. Consultant will participate in eight interviews or focus groups (to be conducted via teleconference or videoconference) with housing producers (e.g. for-profit housing developers, non-profit housing developers, homeless service providers).

### **Final Strategies**

For the strategies that are recommended for inclusion in the City's HPS, Consultant will produce the following for each strategy, based on Consultant's evaluation, input from staff, and feedback gathered through outreach and engagement:

- A description of the strategy;
- Identified Housing Need being fulfilled (tenure and income) and analysis of the income and demographic populations that will receive benefit and/or burden from the strategy, including low-income communities,



communities of color, and other communities that have been discriminated against, according to fair housing laws;

- Approximate magnitude of impact, including (where possible/applicable) an estimate of the number of housing units that may be created, and the time frame over which the strategy is expected to impact needed housing;
- Timeline for adoption and implementation;
- Actions necessary for the local government and other stakeholders to take in order to implement the strategy; and
- Opportunities, constraints, or negative externalities associated with adoption of the strategy.

While this will initially be produced as a stand-alone memorandum, it will later become a section of the HPS.

**Task 3 Consultant Deliverables:**

- Memorandum summarizing existing measures, previously identified strategies, and additional strategies for consideration to address contextualized housing needs;
- Memorandum providing additional evaluation and refinement of selected strategies;
- Memorandum summarizing the information required per the list above for each strategy;
- Up to eight documented discussions with housing producers and/or service providers to seek input on the potential housing strategies;
- Agendas and presentations/meeting materials for up to three meetings (likely by videoconference) with the Advisory Committee; and
- One presentation to the Planning Commission.

**Task 4: Draft and Final Report**

The draft HPS Report will include the following:

- Contextualized housing needs from Task 2;
- Summaries of existing measures and final proposed strategies from Task 3;
- How the City’s existing measures and final proposed strategies help to achieve fair and equitable housing outcomes, affirmatively further fair housing, and overcome discriminatory housing practices and racial segregation; and
- A conclusion addressing the following:
  - A qualitative assessment of how the strategies collectively address the contextualized housing needs identified in the HCA and HPS;
  - Discussion of how the proposed actions, taken collectively, will increase housing options for population groups experiencing a current or projected disproportionate housing need;
  - How the City’s existing measures and proposed strategies will affirmatively further fair housing, link housing to transportation, provide access to Opportunity, address needs for people facing homelessness and equitable distribution of services, create opportunities for rental housing and homeownership, and mitigate vulnerabilities to displacement and housing instability;
  - The rationale for any identified needs not being addressed; and
  - The City’s plan for monitoring progress on the housing production strategies.

Following review by staff and revisions as needed, Consultant will produce a public review draft HPS for review and comment by the City’s Advisory Committee, Planning Commission, City Council, and interested parties. Consultant

will summarize Advisory Committee comments on the draft (if addressing comments would require major updates) or make minor updates to the draft following the Advisory Committee review.

Following public review and comment, Consultant will produce a Final HPS document.

**Task 4 Consultant Deliverables:**

- Public Review Draft HPS;
- Agenda and presentation/meeting materials for one Advisory Committee meeting;
- Presentation to Planning Commission;
- Presentation to City Council; and
- Final Housing Production Strategy.

1. Payment Schedule (Tualatin HPS)

Consultant shall submit invoices to Agency in accordance with the payment schedule below, as described in more detail in Section 4 of the Contract.

Consultant shall submit an invoice to Agency for the amount shown below after the relevant task is completed.

Consultant must submit final invoice within 30 days of the completion of task 4 below.

Labor Expenses	HOURS BY TASK					TOTALS		
	Task 1	Task 2	Task 3	Task 4	Hours	\$	% of Budget	
	Task 1: Project Kickoff	Task 2: Contextualized Housing Needs	Task 3: Evaluation of Existing Measures and Identification of Gaps	Task 4: Draft and Final Report				
ECONorthwest								
Project Director (Beth Goodman)	165	4	8	13	10	35	\$5,775	12%
Project Manager (Becky Hewitt)	145	9	12	62	36	119	\$17,255	35%
Associate (Sadie DiNatale)	120	11	32	79	64	186	\$22,320	45%
Research Associate	95	1	16	22	10	49	\$4,655	9%
<b>Sub-Total</b>		<b>25</b>	<b>68</b>	<b>176</b>	<b>120</b>	<b>389</b>	<b>\$50,005</b>	<b>100%</b>

Totals by Task	Task 1	Task 2	Task 3	Task 4	Totals	Summary of Expenses	
Total ECONorthwest Labor	\$3,380	\$8,420	\$22,705	\$15,500	ECO Labor	\$50,005	100%
Direct Expense	\$0	\$0	\$0	\$0	Non-Labor	\$0	0%
Total by Task	\$3,380	\$8,420	\$22,705	\$15,500	<b>Budget</b>	<b>\$50,005</b>	<b>100%</b>
% of Total Budget	7%	17%	45%	31%			

## **Exhibit B**

### **Required Insurance**

#### **INSURANCE REQUIREMENTS:**

Consultant shall obtain at Consultant's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Consultant shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Consultant shall pay for all deductibles, self-insured retention and self-insurance, if any.

#### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Consultant, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Consultant shall require and ensure that each of its sub-Consultants complies with these requirements. If Consultant is a subject employer, as defined in ORS 656.023, Consultant shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Consultant is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state sub-Consultants complies with these requirements.

**COMMERCIAL GENERAL LIABILITY:**

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**AUTOMOBILE LIABILITY INSURANCE:**

Required  Not required

Automobile Liability Insurance covering Consultant’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

**PROFESSIONAL LIABILITY:**

Required  Not required

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Consultant and Consultant’s sub Consultants, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Consultant shall provide Tail Coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY:**

Required  Not required

Consultant shall provide network security and privacy liability insurance for the duration of the contract and for the period of time in which Consultant (or its Business Associates or sub Consultant(s)) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$\_\_\_\_\_ per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to,

Personally Identifiable Information (“PII”), Payment Card Data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers’ Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Consultant's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

**WAIVER OF SUBROGATION:**

Consultant shall waive rights of subrogation which Consultant or any insurer of Consultant may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Consultant will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Consultant or the Consultant’s insurer(s).

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Consultant shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Consultant’s completion and Agency’s acceptance of all Services required under this Contract, or, (ii) Agency or Consultant termination of this Contract, or, (iii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Consultant shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

The Consultant or its insurer must provide at least 30 days’ written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Consultant agrees to periodic review of insurance requirements by Agency under this Contract and to provide updated requirements as mutually agreed upon by Consultant and Agency.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency acceptance. If requested by Agency, Consultant shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Section.

**Exhibit C**

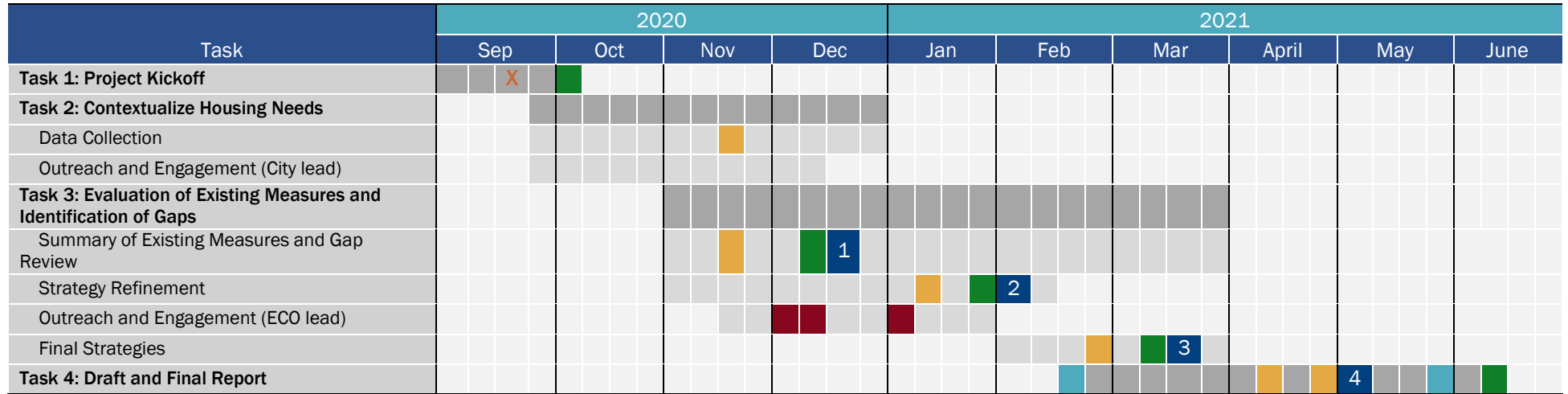
**Independent Consultant Certification**

**Consultant certifies he/she meets the following standards:**

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent Consultant in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following):**  
  
 A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.  
 B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.  
 C. Telephone listing used for the business is separate from the personal residence listing.  
 D. Labor or services are performed only pursuant to written contracts.  
 E. Labor or services are performed for two or more different persons within a period of one year.  
 F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

**Consultant Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Housing Production Strategy Schedule Under DLCD Grant for City of Tualatin 2020-2021



*Project must be complete by June 15, 2021*

- X Project Kickoff Meeting
- Planning Commission Meeting
- City Council Meeting
- Interviews
- Draft Deliverable
- Final Draft Deliverable





*City of Tualatin*

## CITY OF TUALATIN Staff Report

**TO:** Tualatin Planning Commissioners  
**THROUGH:** Steve Koper, Assistant Community Development Director  
**FROM:** Karen Perl Fox, Senior Planner  
**DATE:** 12/10/20

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**SUBJECT:**

Discussion on and Introduction to Tualatin's Housing Production Strategy.

**EXECUTIVE SUMMARY:**

The Tualatin Planning Commission will be presented an overview of a Housing Production Strategy, its purpose, and what input is needed from the Planning Commission.

- **What is Housing Production Strategy (HPS)?** It is a document that would be adopted by the City that includes a list analyzing specific actions for policymakers to consider to help Tualatin meet the housing needs identified in its 2019 Housing Needs Analysis and through public outreach. These actions could be regulatory – increasing buildings heights or density – or financial – provide tax exemption or abatement for affordable housing – or newly adopted policy.
- **Why adopt a Housing Production Strategy?** As part of the Tualatin 2040 project, which is intended to address an ongoing need for housing in Tualatin, it will help implement the 2019 Housing Needs Analysis and other pieces of the newly updated Housing Element of the Comprehensive Plan. Actions from the Housing Production Strategy could also help support the middle housing code update being done as part of Tualatin's House Bill 2001 work.
- **What input is needed on the Housing Production Strategy?** The Presentation (Attachment A) provides an overview and the Memo (Attachment B) provides more detail. Based on this information:
  - Are there any key housing needs missing? Any questions?
  - Do you agree with the broad categories of strategies? Any questions?
  - Are there any missing strategies, measures or actions?
  - Which strategy or strategies do you want to know more about?

## **MORE INFORMATION ABOUT THE PROJECT:**

### **How does the HPS relate to the HNA?**

The HPS is a separate effort, but builds upon the HNA, Housing Strategies and Policy Priorities produced under Tualatin 2040 work in 2019. The HPS can expand upon that earlier work to promote the development of identified housing needs and must achieve fair and equitable housing outcomes.

The City of Tualatin completed its first HNA in 2019, which was acknowledged and accepted by City Council on December 9, 2019 under Resolution No. 5479-19. Tualatin's HNA is an assessment of housing need and capacity that includes the inventory, determination and analysis required under OAR 660-007 (the Metropolitan Housing Rule). The new revised rules in OAR 660-008 now refer to an HNA as a Housing Capacity Analysis (HCS), which is the same as an HNA. To meet the new requirements under House Bill 2003, the City is required to adopt an HNA and incorporate it into its comprehensive plan by ordinance. The adoption of the HNA into the City's Comprehensive Plan is currently scheduled to come before City Council at its meeting on December 14, 2020.

### **What is the timeline for the HPS grant?**

This project kicked-off in late September 2020 and must be completed by June 15, 2021. The City may be able to continue some aspects of the HPS that go beyond the grant work after June 2021. The HPS grant project timeline is provided with this report. **See Attachment D.**

### **What are the key tasks for the HPS?**

- Task 1 - Project Kick Off
- Task 2 - Contextualized Housing Need and Engagement
- Task 3 - Strategies to Meet Future Housing Need
- Task 4 - HPS Report: Achieving Fair and Equitable Housing Outcomes

For additional detail on the key tasks, **See Attachment C** (under Exhibit A Statement of Work pages 16-20).

### **Background**

In 2019 the Oregon Legislature passed Housing Bill 2003, a law to ensure that communities meet the diverse housing needs of Oregonians. The law requires Oregon's medium and large cities with over 10,000 people to study the future housing needs of their residents and to develop strategies to make sure the housing needed is produced.

House Bill 2003 requires cities with over 10,000 people to analyze what housing is needed for current and future residents based on an understanding of housing needs in the context of household income and demographics (such as housing needs of senior households, racial and ethnic minority housing needs, and the housing needs of people with disabilities). The bill requires each city to adopt a housing production strategy within one year of completing the analysis. The housing production strategy will describe policies and programs that the City intends to develop and adopt over the next six years.

On June 8, 2020, City of Tualatin was awarded a grant from the Oregon Department of Land Conservation and Development (DLCD) to develop a prototype Housing Production Strategy (HPS) - one of four HPS prototypes across the state. On September 14, 2020, City Council adopted Resolution No.5520-20 authorizing the City Manager to execute an intergovernmental agreement with DLCD for grant assistance

with a Housing Production Strategy and Housing Code Update. Under the grant, DLCD matched the City of Tualatin with consultant, ECONorthwest, to help with this work. The scope of work and contract with DLCD for this grant is provide with report. **See Attachment C.**

In November 2020, the Land Conservation and Development Commission (LCDC) passed revisions to Oregon Administrative Rules (OAR) 660-008 to implement the requirements of developing a HPS, as described in House Bill 2003. The newly adopted rules require cities to develop housing production strategies to achieve fair and equitable housing outcomes.

**HPS Progress to Date** (October-November 2020):

Task 2 - Contextualized Housing Need and Engagement

- Initial steps have focused on data compilation and information gathering on outreach and engagement conducted to date.
- The PowerPoint presentation prepared by ECONorthwest summarizes the key background data, outreach and engagement efforts conducted to date that will inform the housing production strategies. **See Attachment A.**

Task 3 - Strategies to Meet Future Housing Need

Evaluation of Existing Measures and Identification of Gaps and Summary

- City staff and consultant reviewed Tualatin’s existing housing measures including the Tualatin 2040 housing strategies and existing code and then they identified gaps. Next, they reviewed approximately one hundred potential housing production strategies from an extensive list provided by DLCD. The new measures were reduced down in number to those most applicable to meet the housing needs in Tualatin. Next, the measures will be refined, further developed and evaluated.
- A memo prepared by ECONorthwest titled “Tualatin’s Existing Housing Measures and Potential New Measures” describes the process that was involved to review existing housing measures and to identify new measures for consideration. The memo includes a table that lists and summarizes the new measures under consideration. **See Attachment B.**
- Next, City staff and consultant will work with the Planning Commission to reduce the list of measures down to approximately twenty to take to the next level of consideration.

**Next Steps:**

Task 2 - Contextualized Housing Need work continues

Task 3 - Strategy Refinement

- Outreach and Engagement with Housing Producers and Service Providers

**Upcoming TPC Meetings with HPS:** February 18, 2021, March 18, 2021, May 20, 2021

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**ATTACHMENTS:**

- Attachment A: Presentation
- Attachment B: Memo on Tualatin’s Housing Measures and Gaps from ECONorthwest
- Attachment C: Scope and Contract 19122 under DLCD Grant for Tualatin’s HPS
- Attachment D: Project Schedule under DLCD Grant for Tualatin’s HPS