

MUPTE ordinance recommendations

May 5, 2014

- Edited I.B for clarity

I. State Planning Goal 1 – Citizen Involvement

“To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.”

A. The evaluation and decision process to expand MUPTE boundaries must meaningfully involve the following community stakeholders:

1. The neighborhood organization(s) that encompass or abut any part of the expanded boundary.
2. All residents, property owners and business owners located within 300 feet of the expanded area.

B. The evaluation and decision process to approve a MUPTE project must meaningfully involve the affected community stakeholders, as follows:

1. Any neighborhood organization(s) that encompass any part of, or is located within 300 feet of, the proposed development site may submit to City Council a recommendation to approve, approve with modifications or deny a MUPTE application.
2. A 2/3 vote of City Council shall be required to approve a MUPTE project under any of the following conditions
 - a) *Any neighborhood organization, under Section 1, submits a recommendation to deny a MUPTE project.*
 - b) *The approval ordinance does not incorporate all of the proposed modifications, if any neighborhood organization, under Section 1, submits a recommendation to approve with modifications a MUPTE project.*

c) The MUPTE project development site is not entirely within the Eugene Downtown Plan area and/or a refinement plan subarea(s) that has(have) been reviewed and updated within the prior ten years, unless all neighborhood organization(s) that encompass any part of the development site submit to City Council a recommendation(s) to approve the MUPTE application.

II. Purpose of the MUPTE program

A. To promote housing (and supporting commercial uses) that:

1. Is affordable
2. Is family-friendly
3. Is compatible with surrounding uses
4. Is supported by commercial uses
5. Is served by transit
6. Contributes to the livability, stability and vitality of the surrounding neighborhood(s)
7. Supports the local workforce
8. Does not significantly disadvantage local owners/investors of existing or new non-MUPTE residential developments.

B. To provide tangible community benefits (including affordable housing commensurate with the amount of the City's investment).

C. To provide transparent and accountable stewardship of public investments. (See Reference #5.)

III. Geographic MUPTE area

- A. The area(s) in which MUPTEs can be granted shall not include areas that are designated Low Density Residential or that are currently developed as low-density residential and/or single-family attached residential unless and until such areas are covered by a refinement plan subarea that has been reviewed and updated in the prior ten years.**
- B. The maps [TBD] in Exhibit X depict area(s) in which MUPTEs can be granted.**

IV. Eligible projects

A. To be eligible for a MUPTE, a project must meet the following criteria:

1. Projects must be within the geographic MUPTE area.
2. Projects must be proposed construction, additions to existing structures or conversion of existing non-residential property to housing. Both rental and for-sale condo or townhome projects with at least 10 units are eligible to apply.
3. Projects must have a minimum density of 10 dwellings per net acre.

V. Housing suitable for families

A. Approval of a MUPTE project requires a finding by City Council that the proposed project provides housing suitable for families, as follows:

1. Provision of at least 50% of the dwelling units that have at least two, but no more than four bedrooms and no more than three bathrooms.
2. Indoor and outdoor play areas for children up to age 18.

VI. Required development features

A. [List TBA]

[Note: These should be minimum quality and functional features (e.g., adequate parking, ADA units, etc.), not a rating scheme of “nice-to-haves” (e.g., LEED)]

VII. Community benefit

A. Approval of a MUPTE project requires a finding by City Council that the proposed project provides tangible community benefits over and above any assumed benefits of the construction and existence of the residential and commercial development. This benefit shall meet requirements in both of the following categories:

- a) *Provision of at least 20% of the dwelling units as subsidized housing for households at or below the 60% area median family income (MFI). (See Reference #2.)*

Measurement of household income shall be determined using the area median family income (MFI) for one person (for a studio apartment), two

persons (for a one-bedroom apartment), three persons (for a two-bedroom apartment), or four persons (for a three-bedroom apartment). Affordability shall be defined as a rental rate which does not exceed 30 percent of the monthly gross income including allowances for utilities (rent burden).

Affordable units must be distributed evenly amongst unit mix (bedroom sizes). Projects must maintain the same unit distribution of affordable units during the exemption period but individual units do not need to be designated.

- b) In lieu of providing affordable units, a payment may be made in each year a tax exemption is granted equal to \$2,400 times the total number of units in the exempted project.)*

NOTE: The \$2,400 per unit is based on the following calculation. Monthly subsidy (revenue loss) per affordable unit provided = \$1,000. Annual subsidy = \$12,000 per affordable unit. Spread across total number of units = \$2,400 per unit. The nominal figure used here for the subsidy for an affordable unit may be lower or higher based on more complete analysis.

- 2. Provision of outdoor open space, indoor meeting or recreational facilities or pedestrian and biking infrastructure improvements, available to the public and valued at least 10% [TBA] of the total approved tax exemption.

[Note: The details of this option need to be fleshed out.]

VIII. Conformance with comprehensive plan and Growth Management Policies

- A. Approval of a MUPTE project requires a land use decision by City Council that the proposed project conforms to applicable provisions of the *Metro Plan* and refinement plans.**
 - 1. The finding of conformance must be adopted by a Council resolution or ordinance prior to issuance of building permits.
- B. Approval of a MUPTE project requires a finding by City Council that the proposed project is consistent with the City Council Adopted Growth Management Policies.**
 - 1. The finding of consistency must be adopted by a Council as part of the MUPTE approval ordinance or resolution.

IX. Management and security

A. Approval of a MUPTE project requires a finding by City Council that the proposed project provides adequate on-site management and security, including:

1. A security plan approved by the Eugene Police Department. (See Reference #1.)
2. Provision of lease terms stating that the use, possession or distribution of illegal drugs or of alcohol by minors is cause for termination of the lease.
3. The management and security plans shall be secured by a binding covenant that runs with the land for at least the term of the exemption.

X. Auto, pedestrian and bicyclist safety and convenience

A. Approval of a MUPTE project requires a finding by City Council that the proposed project provides for safe and convenient travel by motorists, pedestrians and bicyclists, including alter-abled individuals, that reside in the development or travel in proximity of the development

1. Pedestrian connection (See Reference #2.)

The project must provide a pedestrian connection and be physically or functionally related to and enhance the effectiveness of the mass transportation system.

Pedestrian connection means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connection may also include rights-of-way or easements for future pedestrian improvements.

XI. Financial reporting

A. Prior to approval and for the duration of the tax exemption, the applicant must provide for review by City staff or independent reviewers designated by City Council the following information: (See Reference #3.)

1. *Pro forma* development budget (detailed project costs);
2. *Pro forma* Sources and Uses;
3. 15 year *pro forma* operating cash flow (income and expense analysis) without the

exemption – demonstrate the 10 year average cash on cash return;

4. 15 year *pro forma* operating cash flow (income and expense analysis) with the exemption – demonstrate the 10 year average cash on cash return;
5. 15 year *pro forma* operating cash flow (income and expense analysis) showing the necessary increase in unit rents to achieve the same return as with the exemption – demonstrate the average cash on cash return;
6. Rent structure by unit type (affordable units to be net of utility allowance);
7. Description of how real estate taxes without the exemption were determined; and
8. All components of developer equity including invested cash.
9. Copy of the market study provided to the senior lender for the project.

B. Prior to approval and for the duration of the tax exemption, the applicant must make available for review by City staff or independent reviewers designated by City Council all financial records made available to lender(s) and/or investor(s).

1. Failure to provide this information for review shall result in denying the application or terminating the exemption.

C. The evaluation of the project shall include an “internal rate of return” projection for at least five years beyond the term of the tax exemption and must account for the market value of the development at the end of that period.

D. The project’s financial status shall be evaluated annually by a qualified, independent financial organization. (See Reference #5.)

1. The owner shall provide at least the following:
 - a) *Full project-based audited financial statements*
 - b) *Internal Revenue Service tax information (tax returns)*
 - c) *Ten year operating cash flow statement, showing actual cash flow for all prior years and the current year and shall include a to-date calculation of the rate of return for the project*
 - d) *Electronic Operating Statement (EOS) or similar form*
 - e) *Electronic Tenant Survey (ETS) (to validate subsequent rental and household income compliance, when unit becomes available for rent after initial occupancy)*

- f) Every fifth year, the tenant income qualification submitted shall be certified by a third party.*
- g) Any other documentation deemed necessary by City of Eugene to calculate or evaluate the rate of return for the project*

2. The owner shall submit the required information within 45 days from the end of the project's fiscal year.

3. The evaluation shall include at least the following:

- a) The cumulative (to-date) internal rate of return.*
- b) Etc. [As recommended by qualified, independent financial analyst(s).]*

4. City of Eugene will advise the owner in writing whether the projected rate of return will exceed 10 percent for the entire exemption period.

5. If City of Eugene determines that the number and unit mix of affordable units is less than the approved percentage or does not match the unit mix of the project, the next available units must be rented to households meeting the income requirements and the project must be brought into compliance before the next reporting period.

XII. Administrative and services costs

- A. The applicant shall pay an application fee and (optionally) annual fees for the term of the exemption sufficient to cover all administrative costs associate with the MUPTE.
- B. The applicant shall pay one-time and/or annual fees sufficient to cover all system development costs to the City for the development over the term of the exemption.

XIII. Exemption term, scope and profit cap

- A. An applicant may apply for a tax exemption for one to ten years. Based on the evaluation of the proposed project, the City Council may deny the application or approve a tax exemption for any number of years up to the number of years requested by the applicant.
- B. The exemption shall apply only to the City of Eugene portion of the *ad valorem* tax unless all other jurisdictions (i.e., 4J, Lane County, LCC and Lane ESD) agree to an exemption to their portions of the *ad valorem* tax, in which case the project shall be exempt from all *ad valorem* taxes on new development structures, as provided by ORS.

C. Upon termination of the tax exemption, the net annual internal rate of return shall be capped at 10%.

1. If the net annual internal rate of return is greater than 10%, the developer will either:
 - a) *Make payment to the City of 75% of the excess over 10%; or,*
 - b) *Extend the period during which subsidized housing is provided based on the following calculation: [to be specified]*

XIV. Annual limit of MUPTE exemptions

A. No more than a total of \$500,000 of new, annual exemptions in City of Eugene *ad valorem* taxes shall be granted in any fiscal year.

NOTES:

What should not be part of MUPTE:

- An open-ended “needs” analysis that lets the developer propose a project that has any number and type of features that make the project more costly than a project that meets the minimum requirements in the same location. While an unrestricted “needs” analysis may sound good in theory, unless there is some upper cap on what the developer includes in the development, all this does is encourage the developer to “gild” the project, and then charge higher rents for a “superior” product. An *unconstrained* “needs” approach actually works against affordable, family-friendly housing.
- There should not be a “scoring” system for qualification. This would be useful *only* if the program makes competitive awards. Otherwise, whether or not there are different levels of exemption (amounts, terms, etc.), what should be specified are simply minimum criteria that must be met. Without competitive awards, a “scoring” system is just a charade that will likely always be satisfied by the developer.

In particular, there should be no LEED or other “better materials” rating. All this does is provide the option to the developer to “gild” their proposal to make the “need” greater. (*Required*, minimum standards, however, are sensible and practicable.)

- The City should not in any way cover “downside” risks of the developer. Some of the “stakeholders” at the recent City Council work session made the absurd suggestion that if the City is going to have a “clawback” on excess profits, then the City should also have a “give more” provision for lower-than-expected profits.

The developer should be solely responsible for their analysis of opportunity and risks, taking into account the terms the City offers, which are: a) We give you some money, and b) your profit beyond 10% is reduced. If the developer doesn’t like those terms, they shouldn’t

apply for MUPTE. Having the City prepared to bail out a failed project is an invitation for developers to take excessive risks and poorly manage their developments.

DRAFT

Exhibit A. References

1. Tempe, AZ. "Staff Summary Report – Development Review Commission Date: 09/13/11 – Core Campus Multi-Family Development"

Under the Tempe, AZ code, all multi-unit developments must have a "security plan" that's approved by the Tempe Police Department. See condition of approval #19 on page 8.

Tempe City Code has highly-developed security plan and management requirements for several uses, including multi-family residential. See "SECURITY REQUIREMENTS" on pages 12-13. These plans must be approved by the Police Department, and the Police Department can use their discretion to add requirements that aren't explicitly enumerated in the City Code.

These security plans require the following areas to be addressed. See ["Article V. Security Plans", page 26-10.](#)

- (1) Plan of operation, program plan and hours;
- (2) Site/building information;
- (3) Safety conditions;
- (4) Patron parking, ingress and egress, vehicular and pedestrian traffic control;
- (5) Staffing and operations; and
- (6) Conditions of plan.

The "take away" is that Tempe Code requires large, student-housing (and other multi-family) developments to be designed, staffed and operated with effective security -- regardless of who develops or purchases the property.

2. Portland OR. MULTe Program Minimum Threshold Requirements

<http://www.portlandoregon.gov/phb/article/431071>

3. Portland OR. MULTe Program Application Requirements

<http://efiles.portlandoregon.gov/webdrawer.dll/webdrawer/rec/5054224/view/Additional%20application%20requirements.PDF>

4. Portland OR. MULTe Program Public Benefits

<http://www.portlandoregon.gov/phb/article/431074>

5. Portland OR. MULTe Administrative Rules

<http://www.portlandonline.com/auditor/?c=31334&a=407913>