BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

HOME BUILDERS ASSOCIATION OF LANE COUNTY, *Petitioner*, and HOUSING LAND ADVOCATES, 1000 FRIENDS OF OREGON, EUGENE AREA CHAMBER OF COMMERCE, WALKABLE EUGENE CITIZENS ADVISORY NETWORK (WE CAN), AARP OREGON, CHRIS WIG, JOHN HOOPS, *Intervenor-Petitioners*, vs. CITY OF EUGENE, *Respondent*.	LUBA Nos. 2018-063 and 2018-064 (Consolidated)

INTERVENOR-PETITIONER HOUSING LAND ADVOCATES' PETITION FOR REVIEW

August 29, 2018
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Cases

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United States Code

Code of Federal Regulations

Statutes

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Regulations

Local Authorities

Other Authorities

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I. INTERVENOR-PETITIONER'S STANDING

Intervenor-Petitioner Housing Land Advocates ("HLA") has standing to intervene in these appeals under ORS 197.830(7)(a) because HLA submitted comments in the record. Rec 563, 1094, 1113.

HLA, a 501(c)(3) charitable corporation, is an entirely volunteer-run and operated organization. Its board of directors is comprised of land use planners, attorneys, lenders, researchers, students, and housing advocates with a demonstrated commitment to affordable housing. HLA serves as an advocate for thoughtful land use planning and aims to ensure that land is available for needed housing. Part of its mission is to act as a watchdog to ensure that state and local governments fulfill their obligations under adopted housing policies, goals, and statutes.

II. STATEMENT OF THE CASE

A. Nature of the Land Use Decision and Relief Sought

HLA seeks review of the legislative land use decisions made by Respondent City of Eugene ("City") that became final on or around June 13, 2018. The decisions on appeal are Ordinances 20594 (LUBA No. 2018-063) and 20595 (LUBA No. 2018-064) (collectively, the "Ordinances"). The Ordinances constitute the City's attempt to implement

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the accessory dwelling unit ("ADU") mandate in Senate Bill ("SB") 1051 (2017), *as amended*, now codified at ORS 197.312(5).

In 2017, the Oregon Legislative Assembly passed SB 1051 as the State's omnibus affordable housing bill as a response to the statewide housing crisis in Oregon. The bill fast-tracked affordable housing permit applications, amended the needed housing statute to reflect protections for households with low, very low, and extremely low incomes, ensured the application of clear and objective standards when reviewing housing applications, and as relevant here, limited local governments' authority to prohibit ADUs. Section 6 of SB 1051 amends ORS 197.312 by adding ADUs to the list of housing types that local governments must allow. In relevant part, the statute provides:

> "(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas *within the urban growth boundary that are*[1] zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.
>
> "(b) As used in this subsection, 'accessory dwelling unit' means an interior, attached or detached residential structure that is

[1] ORS 197.312(5)(a) was amended in 2018 to remedy a scrivener's error and clarified that the new requirement that local governments allow ADUs applies only within the urban growth boundary. Or Laws 2018, ch 15, § 7.

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> used in connection with or that is accessory to a single-family dwelling." Or Laws 2017, ch 745, § 6; App B at 26. (Italics and underscore added.)

This limitation on a local government's ability to regulate ADUs is one tool that the legislature thought would help solve the housing shortage, as ADUs are frequently available at below market rental rates, and are often times the *only* affordable rental choice in low-density residential zones. Rec 697.

Section 13 of SB 1051 directs local governments to adopt implementing legislation for the statewide ADU mandate by July 1, 2018. Or Laws 2017, ch 745, § 13; App B at 31. Instead of directly implementing the statutory language that requires cities to allow "at least one accessory dwelling unit for each detached single-family dwelling," the City effectively rejected the mandate. The City amended the Eugene Code ("EC")[2] provisions that previously governed the highly-regulated residential use of "secondary dwellings" by replacing "secondary" with

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[2] The use of "EC" refers to the Eugene Code as amended by the Ordinances. The manner in which the City amended its code resulted in the application of some existing provisions to ADUs although the Ordinances do not explicitly identify those provisions as provisions that were amended. *E.g.*, Rec 46-47 (amending EC 9.2741 and Table 9.2750, making EC 9.2751(17) apply directly to ADUs). Examples of existing EC provisions that are now applicable to ADUs not specifically identified as amended, such as EC 9.2751(17), are included in App D.

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"accessory." Ordinance 20595 changed the EC definition of "Dwelling, Secondary" to "Dwelling, Accessory[.]" Ordinance 20594 amended the operative provisions of the EC to reflect the changed term, thereby applying all of the restrictive and discriminatory criteria that applied to secondary dwellings within the City's amended regulations to ADUs. Together, the Ordinances create a zoning framework for ADUs that allows the City to prohibit ADUs on a number of bases, contrary to the text and purpose of SB 1051.

For the reasons explained below, HLA asks the Board to reverse the Ordinances because they violate ORS 197.312(5), improperly construe the law, and are prohibited as a matter of both state and federal law. ORS 197.835(9)(a)(D); OAR 661-010-0071(1)(c). In addition, the Board should reverse the Ordinances because they constitute new land use regulations that are inconsistent with acknowledged comprehensive plan policies implementing Statewide Planning Goal 10 and are not supported by an adequate factual basis, as required under Goal 2. ORS 197.835(5), (7) and (9)(a)(D). In the alternative, HLA requests remand for the City to enact zoning regulations that are consistent with ORS 197.312, state and federal law, and to adopt findings that demonstrate

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compliance with comprehensive plan policies that govern residential uses and ensure the appropriate provision of affordable housing.

B. Summary of Argument

LUBA should reverse the Ordinances because they violate ORS 197.312(5). Contrary to the limited authority provided to the City by the statute, the Ordinances include regulations that significantly exceed the City's authority to regulate ADU development. The City erred when it applied its pre-existing and highly-regulated secondary dwelling zoning framework as a means to fulfill the ADU mandate in ORS 197.312(5). By maintaining this onerous secondary dwelling framework and applying it to the regulation of ADUs, the City failed to implement the requirements of ORS 197.312(5) and failed to enact local legislation that aligns with the City's own numerous plan policies, and state and federal law that encourage and offer significant protections for the development of affordable housing.

The Ordinances are inconsistent with and prohibited by ORS 197.312(5) because they regulate ADUs based on aspects other than siting and design, and are unreasonable because they limit or prohibit state-mandated allowances of ADUs. Based on the text, context and legislative history of SB 1051, the City is prohibited from enacting

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regulations that restrict the development and use of ADUs based on status as a renter, occupancy limits, number of vehicles on the property, on-site parking, open space requirements, shape of lot, size of lot, availability of direct access to a street, and a lot's date of creation. Further, the Ordinances are inconsistent with and prohibited by ORS 197.312(5) because they include special protections for certain neighborhoods, in a manner that maintains low densities, prices-out lower income residents, and improperly excludes protected classes, contrary to the intent of SB 1051.

In addition, the City misapplied its own comprehensive plan policies, failed to adequately address a number of applicable housing policies, and violated Statewide Planning Goals when enacting the Ordinances that severely limit the ability to develop ADUs. The City determined that none of its policies under its municipal comprehensive plan were applicable, and that only three policies under the metropolitan comprehensive plan were applicable. Rec 18, 27. Notwithstanding the restrictive nature of the Ordinances, the City failed to address an entire section of policies governing affordable, special need, and fair housing. The Ordinances were required to be adopted under state law, but included numerous provisions that were outside the scope of authority granted to

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the City. As a set of new unacknowledged land use regulations that were required to implement a fresh state-imposed obligation that mandates the additional provision of affordable housing, the City was required to find consistency with not only state law, but also with applicable comprehensive plan polices governing affordable housing. The minimal plan analysis and failure to address particular plan policies related to housing obligations under Statewide Planning Goal 10 resulted in decisions that lack an adequate factual base in contravention of Statewide Planning Goal 2.

The City's errors under state law are further compounded by the City's violation of the federal Fair Housing Act and the Americans with Disabilities Act.. The Ordinances will result in disparate treatment of and impacts to protected persons based on familial status, race, national origin, and disability. Such violations demonstrate that the Ordinances are *per se* unreasonable.

C. Summary of Material Facts

1. Housing in Eugene

Oregon is experiencing an unprecedented housing crisis, and it is most acutely felt in the City of Eugene. According to the National Association of Realtors, the Eugene area is the second most-constrained

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housing market in the nation and nearly half of the community is cost-burdened by the price of housing. Rec 1049. A high percentage of those burdened are older residents, renters, and homeowners, and this burden increases with age. *Id*. Older adults and persons with disabilities are being forced out of their existing communities because the housing crisis has severely limited options available for downsizing, resulting in displacement and costly institutionalization. *Id*.

With an increase in the senior population and an ever-increasing interest in immigration to Oregon, housing prices continue to climb, forcing those on the fringe to relocate or enter into a life of homelessness. Rec 1130. One community member bluntly acknowledged the impact of the housing crisis and the lack of affordable housing: "I see homeless people everywhere in our community. I would like to be part of the solution, by providing some additional real shelter – not tents or huts without heat." Rec 423.

2. Legislative Response to the Housing Crisis

The Oregon Legislative Assembly took action in 2017 to address the housing crisis. SB 1051 (2017) emerged as the late-session revival of House Bill ("HB") 2007 (2017). Initially, HB 2007 was introduced pre-session at the request of House Speaker Tina Kotek. Speaker Kotek

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presented the bill to the House Committee on Human Services and Housing and explained:

> "As I have said many times this session, Oregon's housing crisis is complex and has many root causes. To make necessary progress, I believe the state must pursue policy solutions that address three key goals: provide protection for tenants, preserve the affordable housing that we have, and increase the supply of both market rate and affordable housing.
>
> "This committee has worked and passed House Bill 2004, which strengthens tenant protections, and House Bill 2002, which helps preserve subsidized housing that is at risk of conversion to market rate. I applaud the great work that you have done on housing policy this session. Today, we bring you a bill that addresses the third prong of our response to this crisis. House Bill 2007 is designed to increase housing supply by removing barriers to development at the local level.
>
> " * * * * *
>
> " House Bill 2007 (pending amendments) will do eight things:
>
> "1. It requires cities and counties to fast track affordable housing projects in their permitting processes . * * *
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> " * * * * *
>
> "3. It will require cities and counties to approve applications that meet clear and objective standards as outlined in local zoning or planning codes within urban growth boundaries. I understand that some cities have concerns about having to state clear and objective standards, but I have also heard from cities that have no issue with this requirement because it is their status quo. It is possible to have a permitting process that allows for local control regarding design and clear and objective standards related to those design preferences.

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"4. It updates the definition of 'needed housing' to include 'housing that is affordable to low- and moderate-income people.' This is important because cities need a better handle on their inventory of affordable housing compared to the need and identifying affordable housing as 'needed' in state statute moves us forward.

"5. It requires local jurisdictions to let developers build housing with density that is permitted in the local zoning code unless doing so poses a risk to health, safety, or habitability.

"6. It clarifies that the historic designation process may not reduce 'needed housing' which now includes affordable housing.

"7. It prohibits outright bans on the development of accessory dwelling units (ADUs) and duplexes on land zoned for single-family housing.

"8. Lastly, it allows religious organizations with land located within urban growth boundaries to build affordable housing within the conditions of local zoning and planning requirements." Testimony in Support of House Bill 2007, House Committee on Human Services and Housing, Speaker of the House Tina Kotek, April 13, 2017. App A at 1-2.[3]

Although HB 2007 failed to move out of the House, many of its major components lived on in SB 1051. *See* App A at 18-32 (enrolled SB 1051). As relevant here, the language of the limitation on a local

[3] LUBA may take official notice of the testimony of Speaker Kotek and proposed amendments to HB 2007 as relevant legislative history to aid in its statutory interpretation. OEC 202; *Adkins v. Heceta Water District*, 23 Or LUBA 207 (1992).

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government's ability to prohibit ADUs on property zoned for single family homes developed in the House Amendments to HB 2007,[4] and then emerged as what is now ORS 197.312(5).

The Department of Land Conservation and Development ("DLCD") issued a non-binding guidance document on the implementation of the ADU mandate contained in SB 1051. Rec 593. Although the DLCD guidance document has no weight of law, it does offer some reasonable interpretations of the mandate, and properly states that "local governments should not mandate a minimum lot size for ADUs[,]" and recommends against owner-occupancy requirements and off-street parking requirements. Rec 595-596.

Under ORS 197.646,[5] the City was required to amend its code to come into compliance with this statutory amendment by July 1, 2018. Or Laws 2017, ch 745, § 13; App A at 31.

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[4] The House Amendments to HB 2007 proposed the following language:

> "A city or a county may not prohibit the building of a duplex or an accessory dwelling unit in an area zoned for single-family dwellings located within the urban growth boundary." App A at 9-10.

[5] ORS 197.646 is captioned "Implementation of new requirement in goal, rule or statute; rules" and Section 1 provides:

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3. Local Action in Eugene

The City's comprehensive plans direct the City to take meaningful steps towards remedying the housing crisis, but little has happened on the ground. The Envision Eugene Comprehensive Plan's ("Comprehensive Plan") policy pillars direct the City to providing housing affordable for all incomes and to promote compact urban development. App C at 2. These pillars, or underlying values for the plan's policies, demonstrate a clear directive that land use planning in Eugene must ensure the provision of housing for all community members, including those with low incomes, persons with disabilities, families, immigrants, and the elderly. Similarly, the Eugene-Springfield Metropolitan Area General Plan ("Metro Plan") directs the City to make efforts to address housing affordability. The Metro Plan includes a housing goal that requires the

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> "A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals."

The statute further provides that if the local government fails to amend its regulations, the statute, rule or goal nevertheless become directly applicable to the local government's land use decisions. ORS 197.646(3).

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City to ensure the provision of residential communities so all residents can choose sound, affordable housing that meets individual needs. Metro Plan at II-B-I; App B at 2. That goal is implemented through a number of policies that direct the City to increase the supply of rental housing for low income households, review the zoning code to consider unique housing problems experienced by special needs populations and encourage development of affordable housing for those populations, and to consider zoning regulations' impact on the cost of housing. *See* Affordable, Special Need, and Fair Housing Policies of the Metro Plan; App B at 13. In addition to these policies on housing affordability and availability, the Metro Plan directs the City to protect all persons from housing discrimination, and acknowledges that restrictive regulations such as limits on bedroom and household occupancy directly conflict with practices of racial minorities' cultures. *Id*.

As noted, SB 1051 made the new ADU mandate directly applicable to cities, including Eugene, on July 1, 2018 in an effort to increase the supply of affordable housing in Oregon. The City wrote two draft ordinances to address the new legislation that failed to meaningfully address the above-noted plan policies, and included restrictive code language that was inconsistent with the text and purpose of the statute.

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The City received numerous comments on the proposed legislation that rejected the City's approach and favored strong protections for ADUs. Others bullishly opposed any change to how low-density residential land is used in Eugene. The planning commission considered the proposed local legislation after a hearing, and recommended the Ordinances for city council review. The city council made minor changes to the code language, and ultimately adopted the Ordinances. *See* Rec 65 (June 11, 2018 Agenda Item Summary).

Instead of directly adopting the language that would comply with ORS 197.312(5), the City acquiesced to local neighborhood groups intent on preserving single-family residential uses without ADUs. The city council imported pre-existing restrictive and discriminatory criteria for secondary dwellings to apply to ADUs. The Ordinances as written allow the City to prohibit and severely restrain use of ADUs on land zoned for single-family dwellings based on a number of improper factors including lot shape or size, and whether ADUs should even be allowed in particular detached single-family zoned neighborhoods. *E.g.*, EC 9.3615(2) (prohibiting "Accessory Dwelling[s]" in the residential Jefferson Westside Special Area Zone), Rec 9-10 ; Table 9.3625 (prohibiting more

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than one dwelling on lots smaller than 4,500 square feet in that zone), App C at 12.

Notwithstanding the statutory limitation on a local government's authority to regulate ADUs, the Ordinances limit the use of ADUs based on status as a property owner and the size of an occupant's family. *E.g.*, EC 9.2741, EC 9.2751(17)(a), EC 9.2751(17)(c)(8); Rec 46, App D at 3-4, 6. The City adopted minimal findings that failed to address federal obligations relating to housing discrimination, failed to meaningfully address comprehensive plan goals, policies, and underlying purposes, and failed to acknowledge the obvious conflicts with the statutory limitation on the City's authority to prohibit ADUs on land zoned for single-family dwellings. This appeal followed.

D. LUBA's Jurisdiction

The City's final decisions involve approvals of amendments to land use regulations. Accordingly, the City's decisions are "Land use decision[s]" as that term is defined at ORS 197.015(10)(a)(A)(iii), and LUBA has jurisdiction over the appeals. ORS 197.825.

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III. ARGUMENT

A. FIRST ASSIGNMENT OF ERROR:

The Ordinances are inconsistent with and prohibited by ORS 197.312(5) because they unreasonably regulate ADUs based on aspects other than siting and design in a manner that limits or prohibits state-mandated allowance of ADUs.

1. Preservation

Issues raised in appeals of local legislative land use decisions need not be raised locally. *DLCD v. Columbia County*, 24 Or LUBA 32 (1992). *Roads End Sanitary District v. City of Lincoln City*, 48 Or LUBA 126 (2004*). Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670 (1995).

2. Standard of Review

LUBA's review is prescribed by statute at ORS 197.835. The following subsections are applicable in this proceeding:

> "(7) The board shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:
>
> > "(a) The regulation is not in compliance with the comprehensive plan; * * *
>
> "(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the

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decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations.

"(9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse or remand the land use decision under review if the board finds:

"(a) The local government * * *

"(A) Exceeded its jurisdiction;

"(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

"(C) Made a decision not supported by substantial evidence in the whole record;

"(D) Improperly construed the applicable law; or

"(E) Made an unconstitutional decision."

Because the Ordinances amend acknowledged local land use regulations, such amendments must be consistent with applicable state statutes, state land use goals and implementing rules, and provisions of acknowledged comprehensive plans. ORS 197.175(1) and (2)(a); ORS 197.646; Statewide Planning Goal 2; *ODOT v. Douglas County*, 157 Or App 18, 21, 967 P2d 901 (1998). Local governments amending acknowledged land use regulations have the burden of demonstrating such compliance. *Yamhill County v. LCDC*, 115 Or App 468, 471-472, 839 P2d 238 (1992).

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LUBA affords no deference to local interpretations of state law. *Kenagy v. Benton County*, 115 Or App 131, 134, 838 P2d 1076, *rev den*, 315 Or 271 (1992). The deference to interpretations of local ordinances by local governing bodies under ORS 197.829 "does not apply to enactments by local governments of local plan and land use regulations." *Downtown Community Assoc. v. City of Portland*, 32 Or LUBA 1, 8 (1996).

In a legislative proceeding, a local government must develop enough in the way of findings or accessible material in the record to show that applicable criteria were applied and required considerations considered. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010). LUBA is to reverse a decision if it is prohibited as a matter of law. OAR 661-010-0071(1)(c).

A special standard of review applies to amendments applicable to needed housing like the Ordinances here. ORS 197.831 is titled "Clear and objective approval standards, burden of proof[,]" and provides:

> "In a proceeding before the Land Use Board of Appeals or on judicial review from an order of the board that involves an ordinance required to contain clear and objective approval standards for a permit under ORS 197.307 and 227.175, the local government imposing the restrictions shall demonstrate that the approval standards are capable of being imposed only in a clear and objective manner."

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3. The text and context of SB 1051 preclude regulations that prohibit ADUs in areas zoned for single-family dwellings.

Under ORS 197.312(5), in areas zoned for detached single-family dwellings, the City must allow the development of at least one ADU for each detached single-family dwelling. This mandated allowance of ADUs comes with a restriction on cities' authority, where the City can only subject ADUs to "reasonable local regulations relating to siting and design." ORS 197.312(5)(a).

Analysis of the meaning of the statutory ADU mandate is governed by *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), *as modified by State v. Gaines*, 346 Or 160, 171-73, 206 P3d 1042 (2009) (allowing consideration of the statutes' text, context and legislative history where helpful). The Oregon Supreme Court has long recognized that the statutes, goals, and administrative rules comprising Oregon's statewide land use program are the context for any amendments to a land use program. *See, e.g., 1000 Friends v. LCDC*, 292 Or 735, 642 P2d 1158 (1982); *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 347, 703 P2d 207 (1985); *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 451-52, 742 P2d 268 (1986).

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SB 1051 expressly lists siting and design as the only type of regulations the City can impose on development of ADUs, as the statute does not use open ended language such as "including" or "including but not limited to." *See, e.g., State v. Kurtz*, 350 Or 65, 75, 249 P2d 1271 (2011) ("Typically, statutory terms such as 'including' or 'including but not limited to' * * * convey an intent that an accompanying list be nonexclusive.") Because the statutory language prohibits the City from regulating aspects other than siting and design of ADUs, any provisions in the Ordinances that limit ADU development based on qualities other than siting or design are inconsistent with ORS 197.312(5), and prohibited as a matter of law. Similarly, any siting or design standard that is unreasonable, *i.e.*, that would effectively preclude development of an ADU, violates ORS 197.312(5).

While the limitation on type of regulation is set, the meaning of "reasonable local regulations relating to siting and design" as used in ORS 197.312(5) needs to be reconciled in order to analyze the City's errors in adopting the Ordinances. Recently, the Oregon Supreme Court weighed in on the power of a state statute to limit the authority of subordinate governmental entities. In *Coos Waterkeeper v. Port of Coos Bay*, 363 Or 354,__P3d __(2018), the Court construed the statutory term

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"project" as limiting a state agency's regulatory authority, illustrating how statutory language can limit authority. There, opponents of a proposed terminal argued that the Oregon Division of State Lands had too narrowly interpreted the term "project" in ORS 196.825(1) to exclude operational effects on the environment. In *Coos Waterkeeper*, the Court was careful to say that it was doing its own analysis, not deferring to the agency or the attorney general:

> "Our standard of review of an agency's interpretation of a statute depends on whether the statutory term at issue is an exact term, an inexact term, or a delegative term. *Bergerson v. Salem-Keizer School District*, 341 Or 401, 411, 144 P3d 918 (2006). Here, the disputed words are inexact terms, meaning that the legislature used the words to express 'a complete legislative meaning but with less precision' than if it had used an exact term. *Id*. On review, we interpret the meaning of inexact terms anew, without deference to the agency's interpretation, under the framework set out in *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). *OR-OSHA v. CBI Services, Inc.*, 356 Or 577, 585, 341 P3d 701 (2014). Thus, we review the department's interpretation of the inexact statutory term 'project' for errors of law by interpreting it ourselves pursuant to *Gaines*." 363 Or at 360-61.

In this case, as in *Coos Waterkeeper*, the terms in question are inexact terms. In both cases, there has been no delegation to the subordinate regulatory authority and the statute in question withholds rather than confers regulatory authority. Both statutes regulate the regulator, and here, as in *Coos Waterkeeper*, to accord deference to the regulated body

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as to the meaning and scope of key terms like “reasonable,” “relating to,” “siting,” and “design” is not permitted.

In *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 96, 111, *aff'd*, 238 Or App 439, 243 P3d 82 (2010), LUBA analyzed the definition of the term "protect" estuarine resources to ensure that a proposed use would not result in "'loss, destruction, or injury' beyond a *de minimis* level" of such resources. The term protect was found in the Statewide Planning Goal framework under Goal 16. LUBA reasoned that in the context of the state law, protect could not merely mean an "attempt" to protect and instead focused on giving meaning to the term in the context of Goal 16's language. Similarly, here the terms "reasonable," "siting," and "design" should be given meaning within the context of SB 1051 – that the words cannot be misinterpreted to prohibit ADUs in areas zoned for single-family dwellings.

Further contextual analysis of SB 1051 supports this interpretation. SB 1051 is a legislative act that alters the land use program to address a pressing need for increased supply of housing within existing urban growth boundaries. As the legislative history quoted above in Section II(c)(2) describes, SB 1051 implements the legislature’s recognition that the existing tools, including previous legislative adjustments, have not

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yet yielded urban areas that adequately provide housing accessible and diverse in location, type, price, and rent to meet the needs of all Oregonians, although required by state law. Statewide Planning Goal 10; OAR 660-008-0000, *et seq*. In addition, SB 1051 is a law that allows more housing while attempting to avoid or minimize pressure on urban growth boundaries, prevent *de facto* segregation, and other adverse social, economic, energy, and environmental consequences. This context informs how the language of ORS 197.312(5) must be interpreted.

As explained in Petitioner Home Builder's brief, the terms "siting" and "design" implicate the manner of *where and how* a building goes on a site, not *whether an ADU is allowed* on any particular site.[6] Read in context, the term "siting," should be construed to effectuate the purpose of the statute, and should be read to mean clear and objective standards regulating the physical arrangement of an ADU. *See* ORS 197.307(1)-(4) (mandating application of clear and objective regulations for the development of needed housing in a manner that does not discourage

[6] HLA incorporates all arguments made in the Petition for Review submitted by Home Builders Association of Lane County, to the extent those arguments are consistent with this brief.

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development of housing).[7] *Cf*,. ORS 197.015(12)(a)(B) (defining "Limited land use decision" to be one that "regulate[s] the physical characteristics of a use permitted outright, including but not limited to *site* review and *design* review.") (Emphasis added.) Similarly read in context, the term "design" should be construed to effectuate the purpose

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[7] As part of the "Needed Housing" statutes, ORS 197.307(1)-(4) provides:

> "(1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.
>
> "(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.
>
> "(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.
>
> "(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:
>
> > "(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.
> >
> > "(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

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of the statute and should mean clear and objective standards that regulate the external physical appearance of the ADU. A number of provisions in the Ordinances run afoul of the limitation on local authority by improperly regulating whether an ADU is allowed on a site, regulating aspects unrelated to siting or design, or unreasonably regulating the ADU use. Under ORS 197.312(5), these provisions are prohibited.

i. The Ordinances contain regulations that do not relate to siting or design.

The Ordinances impermissibly require that for all ADUs, "[e]ither the primary dwelling or the secondary dwelling shall be the principal residence of the property owner." EC 9.2751(17)(a). As noted in HLA's comments to the City, the owner-occupancy requirements are not related to siting and design because owner-occupancy does not relate to the physical placement of the ADU structure or the design of that structure. Rec 563-580 (explaining that regulations like those in the Ordinances, including the owner-occupancy requirement, have been aptly described by the Seattle-based policy organization Sightline Institute as a "poison pill" for ADU development). Therefore, the owner-occupancy requirements at EC 9.2751(17)(a)(7)-(10), EC 9.2751(17)(b), EC 9.2751(17)(c)(11)-(14) are inconsistent with and prohibited by ORS

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197.312(5). *See* Rec 46 (amending EC 9.2741 to make EC 9.2751 applicable to accessory dwellings in residential zones); App D at 3-6. Similarly, the requirement at EC 9.2751(17)(c)(8) regulating how many occupants can live in an ADU is neither reasonable nor does it relate to siting and design. *See also* EC 9.2741(2) and EC 9.2751(17)(a)(1) (non-siting/design regulations prohibiting ADUs on alley access lots and flag lots). These regulations are prohibited by ORS 197.312(5).

Further, the requirement at EC 9.2751(17)(c)(4) that regulates the total lot area that can be used for paved or unpaved vehicle use areas does not relate to siting or design of an ADU. In addition, the onsite parking requirement at EC 9.2715(17)(c)(15) does not relate to siting or design of an ADU. This is particularly the case when other offending provisions significantly restrict the ability to locate an ADU on a small or medium-sized lot, such as the onerous open space requirement at EC 9.2751(17)(c)(2) and the maximum lot coverage restrictions that include requirements for carports. EC Table 9.2750; EC 9.0500. Therefore, all of these regulations violate ORS 197.312(5).

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ii. The Ordinances contain regulations that are unreasonable.

The Ordinances violate ORS 197.312(5) because they include unreasonable regulations of the state-mandated allowance of ADUs that can only be subject to reasonable siting and design regulations. The term "reasonable," as used in ORS 197.312(5) should be read to effectuate the statute's purpose and interpreted within the context of Oregon's needed housing statutes, Goal 10, and the broader framework of Oregon's state land use program that directs local governments to achieve equitable availability of housing and productive use of urban lands. *See* n 7 and 9; ORS 197.752.

To be "reasonable" within the meaning of SB 1051, a regulation must satisfy the reviewing body, not the city council, that it will not compromise the goals of the statute. The statute neither requires or permits LUBA or an appellate court to defer to a local government's judgment of whether it has complied with a statute regulating its own conduct. *Kenagy v. Benton County*, 115 Or App at 134. As noted above, based on the context of the legislative response to the housing crisis, the needed housing statutes, and the manner in which ORS Chapter 197 references siting and design as part of the regulation of "physical

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characteristics of a use permitted outright," "reasonable" as used in ORS 197.312(5) should be construed to allow ADUs outright on buildable lots located on land zoned for detached single-family dwellings, subject only to regulations that determine how the structure looks, and where or how the structure is placed on the property. A regulation, even if it relates to siting or design, is not reasonable if, for example, it makes it impossible or difficult to build or finance ADUs by penalizing them with subjective standards, owner-occupancy requirements, bedroom maximums, and other barriers called out in the petitions for review.

Moreover, the Ordinances are unreasonable because they effectively preclude development of ADU's on land zoned for single-family dwellings. The City failed to address the new state mandate within the scope of the authority granted by the statute. Without acknowledging the limitation on its authority to prohibit ADUs, the City transferred pre-existing regulations for secondary dwellings to ADUs with no meaningful explanation as to how those regulations constitute "reasonable regulations relating to siting and design." The City failed to understand and apply the mandatory language of ORS 197.312(5)(a), and that error requires LUBA to reverse the decision because the state law only allows "reasonable regulations[,]" and mandates that local

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governments "shall allow in areas * * * zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling[.]" ORS 197.312(5)(a). As explained below, the Ordinances improperly place restrictions on ADU development that are unreasonable because they effectively preclude an ADU on certain parcels that have a single family dwelling, or make it exceedingly difficult to develop an affordable ADU. Rec 563-564 (noting the negative impacts onerous regulations have on the ability to receive financing for ADUs).

iii. Unreasonable "Type of Lot" Prohibitions

Without any meaningful analysis or relevant findings[8] about the Ordinances' compliance with ORS 197.312(5), the City adopted code language that effectively prohibits ADUs on residential lots based on the type of lot, although the lot type has no bearing on whether an ADU can practically be placed on the lot.

The most egregious example is EC 9.2741(2) that prohibits the development of new ADUs on "alley access lots." Rec 46. *See* EC 9.0500 defining "Alley Access Lot" as one that does not abut a street, and

[8] Based on this assignment of error, and the City's many other errors, it is clear that the Ordinances lack an adequate factual base in violation of Goal 2. *See* Second Assignment of Error.

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is created from a rear portion of an existing lot or parcel." Similarly, and without any rational basis, the Ordinances prohibit development of ADUs on flag lots. *See* EC 9.2741(2) and EC 9.2751(17)(a)(1) at Rec 46 and App D at 3 (prohibiting ADU development generally on flag lots that are smaller than 12,500 square feet; prohibiting attached ADUs on flag lots smaller than 6,100 square feet). *See also* EC 9.2775(4)(a) (using an unreasonable quality of "lot creation date" to prohibit ADUs on flag lots created prior to 2014). The Ordinances are unreasonable because they effectively prohibit siting a detached ADU on a lot that is 12,250 square feet in many neighborhoods arbitrarily based on the lot's shape.

Using location on an alley, lot shape, or lot size to effectively prohibit ADUs on lots that have detached single family dwellings is unreasonable, particularly in light of the City's ongoing failure to remedy its embarrassing status as the second-most constrained housing market *in the United States.* State law mandates that a property owner is entitled to one ADU for every single family dwelling, and using a property's type, shape or minimum lot size to prevent ADU development is unreasonable and irresponsible, especially for a city so lacking in housing affordability and availability.

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iv. Unreasonable regulations of ADUs that result in *de facto* prohibition of such units are not permitted under SB 1051.

The City's adoption of the Ordinances represents its ongoing acquiescence to certain local landowners' desires to gerrymander specific neighborhoods to maintain low densities, price-out lower income residents, and improperly exclude protected classes. For example, the use of EC 9.2751(17)(c) to regulate ADUs in the Amazon, Fairmount and South University neighborhoods (collectively, the "Exclusionary Districts") is unreasonable and has the propensity to create disparate impacts to protected classes. The City adopted unreasonable code language governing ADU development in these neighborhoods that violates ORS 197.312(5). Examples of this language are:

- an outright prohibition on ADUs on lots smaller than 7,500 square feet (EC 9.2751(17(c)(1));
- an open space requirement of 45 feet by 45 feet, effectively requiring a no-build area of 2,025 square feet (EC 9.2751(17)(c)(2)); and

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- a maximum occupancy limit for an ADU based on the number of bedrooms in the primary dwelling (EC 9.2751(17)(c)(8)).

These onerous requirements that have no meaningful justification and prohibit development of ADUs on land zoned for single family dwellings. Therefore, these regulations are unreasonable under SB 1051.

c. Conclusion

In the context of the Oregon Housing Crisis, Goal 10, the stated purpose of SB 1051 and its legislative history, and the structure and terminology used in ORS 197.312, these unreasonable regulations exceed the scope of authority granted to local governments to regulate ADUs. Because the Ordinances include regulations that do not regulate siting and design and that are unreasonable, they are prohibited by ORS 197.312(5), and the Board should reverse the Ordinances.

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B. SECOND ASSIGNMENT OF ERROR (COMBINED): The Ordinances are inconsistent with applicable comprehensive plan policies, and the City's failure to comply with its comprehensive plans results in Ordinances that lack an adequate factual base and violate Statewide Planning Goal 2.

1. Preservation

See Section III (A) (1).

2. Standard of review

See Section III (A) (2).

3. The City enacted the Ordinances in manner that lacks an adequate factual base because the City failed to adequately evaluate consistency with housing goals and policies of the Metro Plan and Comprehensive Plan, where the impetus for the Ordinances was a mandate from the State Legislature to provide affordable housing through increased ADU allowances.

The City's barebones findings on comprehensive plan consistency demonstrate that the Ordinances were approved without an adequate factual base. Findings for Ordinance 20595 stated that neither the Metro

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Plan nor the Comprehensive Plan included any relevant policies. Rec 43. Findings for Ordinance 20594 determined that no Comprehensive Plan policies were relevant and that only three Metro Plan policies applied. Rec 18. In the context of the purpose of SB 1051 and the ongoing affordable housing crisis in Oregon, it is shocking that the City failed to address many of its own comprehensive plan policies that direct the City to take steps to remedy the housing shortage and discrimination.

Metro Plan Policy A.13 is one of eight policies on Residential Density and requires the City to increase overall density by creating more opportunities for infill. The City's minimal findings of plan policy consistency with Metro's Residential Land Use and Housing Element for Ordinance 20594 are provided here (plan policy language italicized):

> "*A.13* *Increase overall residential density in the metropolitan area by creating more opportunities for effectively designed in-fill, redevelopment, and mixed use while considering impacts of increased residential density on historic, existing and future neighborhoods.*
>
> "The intent of the amendments is to create more opportunities citywide for accessory dwellings in areas designed for residential use, consistent with this policy. The standards currently in place for accessory dwellings will continue to apply at this time which will ensure minimal impact on surrounding properties in historic, existing and future neighborhoods.

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> *"A.17 Provide opportunities for a full range of choice in housing type, density, size, cost and location.*
>
> *"A.18 Encourage a mix of structure types and densities within residential designations by reviewing and, if necessary, amending local zoning and development regulations.*
>
> "Consistent with these policies, the amendments provide for more opportunities for smaller housing types within existing and future residential neighborhoods."

These findings are incorrect.

The finding states that "the standards currently in place for accessory dwellings will continue to apply." But as just discussed, maintaining the same standards that previously applied to secondary dwelling units in the Exclusionary Districts does not increase overall density. This is especially the case where the Ordinances prohibit ADUs on lots smaller than 7,500 square feet in the Exclusionary Districts. EC 9.2751(17)(c)(1). The City's approach of restrictive ADU regulation does not increase residential density and does not provide for a full range of choice in housing type, density, size, cost and location, contrary to the plan policies the City found to be applicable.

Moreover, the City failed to identify numerous plan policies that apply to the Ordinances. As explained in greater detail below, if the City had sufficiently evaluated the Ordinances against the comprehensive

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plans, it would have to admit that the Ordinances fail to achieve the policies that promote housing for all, and result in disparate impacts to protected classes. The highly-restrictive nature of the Ordinances and the comprehensive plan policies that the City should have applied point to one conclusion: the Ordinances are inconsistent with the plan goals and policies, providing a basis for reversal or remand. ORS 197.835(7)(a). This failure to meaningfully evaluate the Ordinances under clearly applicable comprehensive plan policies, including policies implementing Statewide Planning Goal 10,[9] demonstrates that the Ordinances lack an adequate factual base, providing an additional basis for remand or reversal. ORS 197.835(6).

i. The Ordinances are inconsistent with Metro Plan Residential Policies.

The Residential Land Use and Housing Goal of the Metro Plan requires the City to ensure the provision of "viable residential communities so all residents can choose sound, affordable housing that

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[9] Statewide Planning Goal 10: Housing is "[t]o provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density."

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meets individual needs." Metro Plan at II-B-I, App B at 2. A number of plan policies implement this overarching goal, and those policies apply to the Ordinances, notwithstanding the City's failure to identify them in findings. Metro Housing Policy A.2 requires residentially designated land within the UGB to be zoned consistent with the Metro Plan. Metro Plan at III-A-5.

As noted above, the passage of these Ordinances occurred in the context of a statewide mandate attempting to ease Oregon's housing crisis, where the Eugene area is the second most-constrained housing market in the nation, nearly half of the community suffers from cost-burdened housing prices, and ADUs often times provide the only affordable rental choice in low-density residential zones. Rec 1049; 697. Notwithstanding this context and the City's stated intent to implement SB 1051, the City failed to identify an entire Metro Plan section that addresses "Affordable, Special Need, and Fair Housing[.]" That plan section provides the following relevant policies:

> "A.28 Seek to maintain and increase the supply of rental housing and increase home ownership options for low- and very low-income households by providing economic and other incentives, such as density bonuses, to developers that agree to provide needed below market and service-enhanced housing in the community.

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" * * * * *

"A.30 Balance the need to provide a sufficient amount of land to accommodate affordable housing with the community's goals to maintain a compact urban form.

"A.31 Consider the unique housing problems experienced by special needs populations, including the homeless, through review of local zoning and development regulations, other codes and public safety regulations to accommodate these special needs.

"A.32 Encourage the development of affordable housing for special needs populations that may include service delivery enhancements on-site.

"A.33 Consider local zoning and development regulations impact on the cost of housing.

"A.34 Protect all persons from housing discrimination."

Metro Plan III-A-12; App B at 13. These policies clearly demonstrate the importance of an in-depth analysis of impacts to affordable housing as part of the review, preparation, and decision to modify the zoning code. The City failed to address how the restrictive and protectionist Ordinances support these relevant policies, including: A.28 (increase supply of rental housing and home ownership for low-income households), A.30 (balance the need for land necessary to accommodate affordable housing with maintenance of the compact urban form), A.31 (consider housing problems experienced by special needs populations

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through review of zoning regulations), A.32 (encourage development of affordable housing for special needs populations), A.33 (consider development regulations' impact on cost of housing), and A.34 (protect all persons from housing discrimination).

The City also failed to apply the Metro Plan's Residential Density Policies. Metro Housing Policy A.10 requires the City to promote higher residential density inside the UGB. No findings address the provision, as the City failed to identify this as an applicable policy. Similarly, the City failed to evaluate consistency with Metro Housing Policy A.14, although it applies. That policy directs the City to review its zoning regulations to remove barriers to higher density housing and to provide for a full range of housing options. The numerous limiting regulations apply to the development of ADUs throughout the City, and the use of the regulations to prohibit ADU development in the Exclusionary District clearly conflicts with this policy. Accordingly, the Ordinances are inconsistent with the Metro Plan Residential Density Policies.

As explained in the next assignment of error, the restrictive manner in which the City has decided to regulate ADUs has significant negative implications for protected classes because the Ordinances limit opportunities for affordable housing that shelters families, persons with

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disabilities, the elderly, and racial minorities that would otherwise be available under state law. The City has an obligation to ensure that the Ordinances are consistent with applicable comprehensive plans, and the City failed to evaluate the Ordinances under the affordable, special need, and fair housing policies and residential policies of the Metro Plan. The City failed to consider the impact of the Ordinances on the cost of housing, on the development of affordable housing for special needs populations, and whether the Ordinances would result in housing discrimination. Based on the assignments of error presented, the Ordinances are so obviously at odds with these policies because the Ordinances do not provide the allowed ADU use in single-family zoned areas as mandated under SB 1051 to remedy the housing crisis.

ii. The Ordinances are inconsistent with Comprehensive Plan policies.

The Ordinances' findings incorrectly determine that the Comprehensive Plan has no relevant policies. Rec 18, 27. The Comprehensive Plan Policy Pillar 2 requires that the City provide housing affordable to all income levels. Comprehensive Plan at I-5. App C at 2. Policy Pillar 4 requires the City to promote compact urban development. *Id*. These pillars demonstrate a directive that land use

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planning in Eugene must provide housing for all community members, including low income, persons with disabilities, families, immigrants, and the elderly. These pillars are particularly relevant in the context of the City being required to implement a state mandate that ensures one ADU is allowed for each detached single family dwelling. As explained in other assignments of error, the Ordinances reduce opportunities for affordable housing that are protected under State law through the application of unreasonable regulations and regulations unrelated to siting and design. This approach is in direct conflict with the Comprehensive Plan's policy pillars requiring provision of affordable housing and urban development.

The Ordinances also conflict with specific Comprehensive Plan policies. As noted below, the overly-restrictive regulations prohibit property owners from building ADUs on land zoned for single family dwellings, resulting in elderly community members not being able to age in place. Such an outcome is inconsistent with Comprehensive Plan Policy 3.3 that requires the City to enhance areas for retirement living.

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iii. The City's failure to address and find consistency with applicable plan policies demonstrates a lack of an adequate factual base.

"Goal 2 * * * requires that land use decisions have an 'adequate factual base.'" *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268 n 11, 259 P3d 1021 (2011). "[A]n 'adequate factual base' is synonymous with the requirement that a decision be supported by substantial evidence." *Id*. When reviewing a record for substantial evidence, LUBA asks whether "the local government's decision * * * is based on facts that are * * * supported by substantial evidence in the whole record." *Stevens v. City of Island City*, 260 Or App 768, 772, 324 P3d 477 (2014) (internal quotation marks omitted). With regard to providing an explanation of the basis for a challenged legislative decision, the Goal 2 "adequate factual base" requirement can only be satisfied if the decision is supported by either (1) findings demonstrating compliance with applicable legal standards, or (2) argument and citations to facts in the record in respondents' briefs, adequate to demonstrate compliance with applicable legal standards. *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

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Here, the City is enacting new land use regulations to implement SB 1051, a statute that puts new obligations on local governments' housing obligations. Therefore, although the Ordinances include pre-existing code language, that language as applied to ADUS must be acknowledged as consistent with state statutes and administrative regulations, as well as the Statewide Planning Goals.

The City failed to sufficiently evaluate the Ordinances and their consistency with relevant plan policies, as explained above. Because the City failed to meaningfully analyze the impact the Ordinances would have on the affordable housing that SB 1051 directed local governments to allow, the Ordinances lack an adequate factual base. The City failed to review data from its growth monitoring program that is required by the Comprehensive Plan under several policies that require development of data that allows for evaluation of the City's achievement of its goals and objectives. *See* Comprehensive Plan Policy 10.8 (requiring the monitoring of the creation of affordable neighborhoods) and Comprehensive Plan Policy 10.9 (requiring programmatic review of data, analysis and review of population forecasts, housing trends addressing types, density and affordability, and rate of development of residential land). Instead of evaluating relevant data that the Comprehensive Plan

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requires, the City merely took its highly-regulated secondary dwelling zoning framework and inserted the State's terminology of "ADU" into it, notwithstanding numerous plan policies, and state and federal law that encourage and offer significant protections for the development of affordable housing.

The City failed to act consistently with the Metro Plan and the Comprehensive Plan, failed to make a decision based on data that the Comprehensive Plan requires to be developed, and failed to fulfill its obligations under the SB 1051 directive. Because of these failures, the City passed the Ordinances without an adequate factual base, and the Ordinances should be reversed.

C. THIRD ASSIGNMENT OF ERROR:

The Ordinances are prohibited by ORS 197.312(5) because they constitute unreasonable regulations not related to siting or design that violate federal law.

1. Preservation

See Section III (A) (1).

2. Standard of Review

See Section III (A) (2).

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3. The City's decision to embrace Exclusionary Districts violates federal law.

The Ordinances are the result of the City's feeble attempt to implement the ADU mandate in SB 1051. The Ordinances conflict with state law because of the City's use of its onerous and prohibitive secondary dwelling regulations as the framework to implement the law. The City's decision to apply existing code language to regulate ADUs as a method to implement SB 1051 also highlights the many legal problems the City's code has with fair housing obligations and compliance with federal law. The Ordinances' unreasonable regulations violate not only ORS 197.312(5), but also federal protections in the Fair Housing Act ("FHA"), 42 USC §§ 3601, *et seq*. and the Americans with Disabilities Act ("ADA") 42 USC §§ 12101, *et seq.* Violations of federal law make it clear that the Ordinances are not reasonable regulations related to siting and design, and provide an additional basis to reverse the Ordinances.

One obvious problem is that the Ordinances regulate ADU development in a manner that allows for special treatment in certain Exclusionary Districts. As explained below, this special treatment that prohibits ADUs on land zoned for single-family dwellings with the Exclusionary Districts runs afoul of ORS 197.312(5) and the FHA and

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ADA because they lead to disparate treatment and impacts for protected classes, and are therefore *per se* unreasonable.

i. Legal Background

The FHA prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). 42 USC § 3604. It is equally well-established that zoning practices that discriminate against disabled individuals violate § 3604, if they contribute to "mak[ing] unavailable or deny[ing]" housing to those persons. *Pacific Shores Properties, LLC v. City of Newport Beach,* 730 F3d 1142, 1157 (9th Cir 2013) *citing Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F3d 725, 730-32 (9th Cir 1999) *and City of Edmonds v. Washington State Bldg. Code Council*, 18 F3d 802, 805 (9th Cir 1994).

The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 USC § 12132. Like the FHA, the ADA prohibits governmental entities from discriminating against disabled persons through zoning. *Pacific Shores*

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Properties, LLC v. City of Newport Beach, 730 F3d at 1157 *citing Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F3d 725, 730-32 (9th Cir 1999) *and Casa Marie, Inc. v. Superior Court of Puerto Rico*, 988 F2d 252, 257 n 6 (1st Cir 1993).

As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the FHA and ADA take precedence over conflicting state and local laws. Thus, the FHA prohibits state and local land use laws, policies, and practices that discriminate based on a characteristic protected under the FHA. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences. *See Joint Statement of the Department of the Housing and Urban Development and the Department of Justice*: *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* at 2; App E at 2.[10]

In 2015, the U.S. Supreme Court affirmed an interpretation of the FHA that explained that even absent discriminatory intent (*de jure* discrimination), a local government faces liability under the FHA for any land use law or practice that has an unjustified discriminatory effect on a

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[10] LUBA may take official notice of this joint statement as a public act of executive departments of the United States. OEC 202.

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protected class (*de facto* discrimination). *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 125 S Ct 2507 (2015). A land use law or practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. 24 CFR § 100.500.

The Ordinances are land use laws that address the provision of housing, and therefore are subject to the FHA and ADA. The City is prohibited from taking actions that result in either *de jure* or *de facto* discrimination, including passing zoning laws that have unintended disparate impacts on access to housing for protected classes such as families, persons with disabilities, and racial minorities. *Id.* The language of the Ordinances and the record as a whole demonstrate that in drafting its prior code provisions for secondary dwellings, and newly applying those code provisions to state-mandated ADUs, the City has acquiesced to local protectionist demands cloaked in the coded terms of "neighborhood livability" and "existing character" that have the propensity to result in disparate impacts, even though many community members rejected such a protectionist approach. *E.g.*, Rec 132, 134, 584, 587-588 ("'[L]ivability' is often placed in opposition to any increase in

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housing density. The fact is livability in many Eugene neighborhoods is already beyond access to a growing majority of the population"). Such coded terminology has frequently been used as justification to limit protected classes' access to housing after the U.S. Supreme Court ruled that *de jure* housing discrimination was illegal in *Buchanan v. Warley*, 245 US 60 (1917). HLA, to the best of its ability, is committed to pulling down this cloak in 2018 by ensuring local jurisdictions issue equitable and fair local land use decisions.

ii. The Ordinances include unreasonable regulations that are not related to siting or design and conflict with federal law.

The Ordinances are *per se* unreasonable because they create land use laws that will result in disparate treatment or impact to a protected class under FHA.

iii. EC 9.2751(17)(c)(8) is prohibited by federal law because it will result in a disparate impact to protected persons based on familial status, race and national origin.

The Ordinances will have a disparate impact on a protected class because they limit affordable housing opportunities for families based on

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their familial status, where those opportunities would otherwise be available under state law. A disparate impact based on familial status is predictable because EC 9.2751(17)(c)(8) prohibits families larger than two persons from residing in certain ADUs within the Exclusionary Districts. The code provision provides:

> "Maximum Occupancy. For lots with a primary dwelling containing 3 or fewer bedrooms, the [ADU] shall be limited to 3 occupants. For lots with a primary dwelling containing 4 or more bedrooms, the [ADU] shall be limited to 2 occupants." (Emphasis added).

Occupancy levels are typically addressed in the building code, not within land use criteria. Yet the City, without any discussion of the State's building code or any meaningful explanation of the occupancy limitations' relationship to health and safety standards, imposed occupancy limits on ADUs in the Exclusionary Districts that effectively limit affordable housing opportunities for families. EC 9.2751(17)(c)(8) limits the number of occupants in an ADU based not on building code requirements, but on an arbitrary number of bedrooms in the primary dwelling. Under the Ordinances, a property owner residing in a four-bedroom primary residence would be precluded from providing an affordable ADU to a couple with a baby, for no legitimate purpose. Families of four or more are prohibited from residing in any ADU

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located in an Exclusionary District. EC 9.2751(17)(c)(8). *See also* EC 9.2751(17)(a)(5) (limiting ADUs in all neighborhoods to two bedrooms, effectively precluding many families). This is discrimination that will predictably lead to a disparate impact based on familial status and violates the FHA.

By limiting the number of occupants in an ADU with no relationship to health or safety, as otherwise implemented through the building code, the City is effectively prohibiting the use of ADUs by families in its Exclusionary Districts and throughout the City. Occupancy limits that are unrelated to health and safety serve no legitimate public policy, and only provide a way for privileged people to discriminate against the young, poor, and recently immigrated populations, not to mention people with disabilities. Rec 577. EC 9.2751(17)(c) allows the Exclusionary Districts to prohibit affordable ADUs for protected classes, including families and people with disabilities.

The City made no findings on the impact of the occupancy limits on the availability or affordability of housing that ORS 197.312(5) seeks to increase. The City was obligated to evaluate the impact of the Ordinances on housing for all community members, but failed to do so (*see* Second Assignment of Error). If the City had correctly evaluated the

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Ordinances under Statewide Planning Goal 2 and applicable comprehensive plan policies, it would show with its own data that the Ordinances discriminate against families and cause a disparate impact on a protected class based on familial status.

Familial status is a protected characteristic under the FHA, and this regulation runs afoul of the FHA because it will result in a disparate impact to persons based on a protected characteristic. The Ordinances' unjustified occupancy limit is prohibited as a matter of law under the FHA. The Ordinances violate ORS 197.312(5) because local land use laws that are prohibited under federal law cannot be considered reasonable even if shrouded in the veil of siting and design regulations. The Ordinances should be reversed because they violate federal law, are *per se* unreasonable, and violate ORS 197.312(5).

In addition to the Ordinances' impermissible limit on the number of occupants and bedrooms, the Ordinances also restrict the amount of space that can be used for vehicle storage. EC 9.2751(17)(c)(4). Collectively, the regulations in the Ordinances raise concerns about the Ordinances' discriminatory intent and resulting disparate impacts relating not only to familial status, but also national origin and race. The Metro Plan acknowledges that practices of some cultures, such as Latino and

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Asian households, conflict with limitations on household size and bedroom occupancy limits. Metro Plan at III-A-12; App B at 13. *See also Avenue 6E Investments, LLC v. City of Yuma*, 818 F3d 493 (9th Cir 2016) (acknowledging as plausible claims under the FHA and Equal Protection Clause of the U.S. Constitution based on perceived city discrimination due to the city's capitulation to opponents' animus against Hispanics and assumed stereotypes such as large families and ownership of numerous vehicles). Here, the Ordinances' requirements that limit the number of occupants and vehicle storage space for ADUs offend the underlying protections in the FHA for racial groups that have cultural practices resulting in larger families and more vehicles. Again, to make matters worse, these restrictions apply only in the Exclusionary Districts, giving rise to an inference of intentional discrimination, and neighborhood-specific exclusion of protected classes.

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iv. The Ordinances' effective prohibition of ADU development on land zoned for single family dwellings conflicts with federal law because it will result in a disparate impact on persons with disabilities.

As explained in the First Assignment of Error, it is abundantly clear that the City is implementing regulations governing ADUs that do not relate to siting and design, and effectively prohibit ADUs on a number of parcels zoned for single-family dwellings. For example, EC 9.2741(2) prohibits ADUs on alley access lots. Similarly, EC 9.2751(17)(c)(1) prohibits ADUs on lots smaller than 7,500 square feet in the Exclusionary Districts. The hyper-regulated Jefferson Westside Special Area Zone prohibits ADUs outright. EC 9.3615(2). The wide range of minimum lot sizes for ADUs prohibit such units on a number of parcels throughout the City with no justification.

Those missed housing opportunities otherwise mandated by ORS 197.312(5) will have a disparate impact on vulnerable communities, including persons with disabilities and elderly. For example, one community member explained that the City's onerous ADU regulations based on neighborhood and minimum lot size would prohibit the property

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owner from developing an ADU on her property, although she wishes to develop a second dwelling to house a home health aid to allow the property owner to age in place. Rec 888. This example demonstrates how the City's unreasonable and prohibitive regulations result in a disparate impact to protected classes such as persons needing home health assistance, a characteristic that is protected under the FHA and ADA. Another example is where the occupancy limitation at EC 9.2751(17)(c)(8) and the bedroom limitation at EC 9.2751(17)(a)(5) combine to impermissibly prevent a family residing in an ADU from having an in-home care provider if a disability arises that would necessitate an additional occupant to provide needed care. The City could have been supportive of *all* its community members including the elderly and persons with disabilities, but instead, acquiesced to protectionist neighborhood demands. This is exactly the type of action the FHA, ADA and *Inclusive Communities Project* protects against.

Similarly, the City's approach toward ADU square footage maximums demonstrate the Ordinances have a propensity to have a disparate impact on persons with disabilities. The City failed to evaluate whether it has an adequate factual basis for its arbitrary sliding-scale maximum square footage requirements in the Ordinances, depending on

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what neighborhood the ADU is proposed and the size of the lot. *Compare* EC 9.2751(17)(a)(1)-(2) (maximum square footage ranging from 610 to 800 square feet) *with* EC 9.2751(17)(c)(4) (maximum square footage ranging from 600 to 800 square feet). This failure is particularly egregious because the City failed to determine how the restrictive square footage maximums allow for sufficient compliance with Metro Plan policies A 31- A34 and the ADA. The Ordinances fail to adequately allow for the provision of size-appropriate ADUs for persons with disabilities. Rec 504. *Compare* EC 9.2751(17)(a)(1)-(2) and (c)(4) *with* Rec 828 (Washington County zoning code provision allowing for additional maximum square footage to accommodate ADA standards). If the City wishes to limit the size of some ADUs in its Exclusionary Districts to 600 square feet, it should include an exception for ADA compliant units allowing for a larger unit. As written, the Ordinances will have a disparate impact on persons with disabilities that cannot use a dwelling due to the City's arbitrarily-imposed restrictive maximum square footage requirements that are non-complaint with ADA standards.

The Ordinances conflict with the FHA's prohibition on local land use laws that create a disparate impact on protected classes including the elderly and persons with disabilities. The Ordinances remove affordable

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housing opportunities that are available under state law that benefit the elderly and persons with disabilities and therefore, are clearly unreasonable, and are inconsistent with and fail to implement the statutory mandate for ADUs.

v. EC 9.2751(17)(c)(8) is prohibited by federal law because it constitutes disparate treatment of protected persons based on familial status, race, national origin, and disability.

The Ordinances constitute disparate treatment of a protected class because they are intended to limit affordable housing opportunities in specific neighborhoods for families based on their familial status, where those opportunities would otherwise be available under state law. A number of elements are considered to determine whether a jurisdiction was motivated by a discriminatory purpose, including a pattern unexplained on grounds other than discriminatory ones, historical background of the decision, specific events leading up to the decision, and relevant legislative history. *Arlington Heights v. Metropolitan Housing Corp*., 429 US 252, 266-68, 97 S Ct 555, 50 L Ed2d 450

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(1977). *See also Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F3d 690, 703 (9th Cir 2009).

Here the record demonstrates that certain local citizens strongly opposed any further development of affordable housing in specified neighborhoods. *E.g.*, Rec 961-963 (individual claiming that failure to prohibit ADUs in the Jefferson Westside Special Area Zone "would be unlawful" and claiming that ADUs "would be of no value" in that zone). As noted in the Home Builders' Petition, staff expressed angst about the proposed ADU prohibition in the Westside Jefferson neighborhood, but the City eventually acquiesced to local demands, prohibiting ADUs in the Jefferson Westside neighborhood.

Other provisions of the Ordinances also support a determination that the Ordinances will discriminate against protect classes. For the same reasons provided in subsections (b)(i) and (b)(ii) of this Assignment of Error, the record and regulations in the Ordinances demonstrate a discriminatory purpose and treatment of protected classes. By enacting the Ordinances that impose occupancy and bedroom limitations, and maximum square footage requirements, the City has created a zoning framework that discriminates against families, racial minorities, the elderly, and persons with disabilities. The Ordinances prevents

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development of the full amount of affordable ADUs that should be available to families, immigrants, the elderly and disabled persons under state law in the existing low-density Exclusionary Districts. Because the Ordinances have a discriminatory purpose, and will result in disparate treatment of protected classes, they are *per se* unreasonable, and prohibited by ORS 197.312(5).

vi. Conclusion

The City prohibited ADUs on certain lands zoned for single family dwellings in contradiction of the ORS 197.312(5) mandate that local governments "shall allow * * * at least one accessory dwelling for each detached single-family dwelling[.]" The City's failure to pass local legislation that is within the authority provided under ORS 197.312(5) results in lost affordable housing opportunities mandated by the State, and those lost opportunities will have a disparate impact on protected classes. Further, the language of the ordinances and the context in which they were passed demonstrates that the Ordinances have a discriminatory purpose and result in disparate treatment of protected classes.

Eugene's historic failure at ensuring housing affordability and availability for all of its population is not an excuse for this poor attempt to implement ORS 197.312(5). The City continues to open itself up to

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liability under the FHA and the ADA when it allows belligerent local landowners to dictate *de jure* and *de facto* discriminatory land use regulations. LUBA need not perform a wholesale review of the byzantine Eugene Code that is laced with discriminatory language to determine that these Ordinances not only violate ORS 197.312(5), but are inconsistent and offend the FHA and the protections it offers to protected classes. The Ordinances should be reversed for violating the FHA. They should also be reversed because an ordinance that violates federal law is *per se* unreasonable. In the alternative, the Ordinances should be remanded for the City to try to fix its errors.

D. CONCLUSION

The City's decision to claim that more housing will result from passage of the Ordinances as a means to meet Goal 10 obligations and its comprehensive plan policies set the stage for its failure to carefully consider the full impact of the Ordinances. If the City had performed the required in-depth analysis necessary to meaningfully meet its housing goals, it could have remedied its own errors. Instead, organizations like HLA, with limited resources, are required to step in to ensure compliance with SB 1051, consistency with the Goals and comprehensive plans, and

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expose discrimination at the local level – whether intentional or by disparate impact.

DATED: August 29, 2018.

TOMASI SALYER MARTIN

By: _____

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CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief Length

I certify that (1) this brief complies with the word-count limitation in OAR 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is **12,032** words.

Type Size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by OAR 661-010-0030(2).

DATED this 29 day of August, 2018.

Scott N. Hilgenberg, OSB #160148
Jennifer M. Bragar, OSB #091865

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I caused to be filed via USPS first-class mail, postage prepaid, the original and four copies of this **INTERVENOR-PETITIONER'S PETITION FOR REVIEW** with:

Oregon Land Use Board of Appeals
775 Summer St NE, Suite 330
Salem, OR 97301-1283

On the same date, I served a true and correct copy by USPS first-class mail, postage prepaid, on:

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Intervenor-Petitioner Housing Land Advocates' Petition for Review

Appendix A

Select Legislative History

LUBA Nos. 2018-063 and -064

Testimony in Support of House Bill 2007
House Committee on Human Services and Housing

Speaker of the House Tina Kotek
April 13, 2017

Thank you for the opportunity to testify this morning on House Bill 2007.

As I have said many times this session, Oregon's housing crisis is complex and has many root causes. To make necessary progress, I believe the state must pursue policy solutions that address three key goals: provide protection for tenants, preserve the affordable housing that we have, and increase the supply of both market rate and affordable housing.

This committee has worked and passed House Bill 2004, which strengthens tenant protections, and House Bill 2002, which helps preserve subsidized housing that is at risk of conversion to market rate. I applaud the great work that you have done on housing policy this session. Today, we bring you a bill that addresses the third prong of our response to this crisis. House Bill 2007 is designed to increase housing supply by removing barriers to development at the local level.

While the -1 amendment before you is not the final amendment, I would like to walk you through the elements that will be in the forthcoming -2 amendments.

House Bill 2007 (pending amendments) will do eight things:

1. It requires cities and counties to fast track affordable housing projects in their permitting processes. "Affordable housing" is defined as 50 percent of units affordable at 60 percent of Median Family Income (MFI) with an affordability covenant of at least 60 years. State law currently requires local jurisdictions to review and make a determination on an application within 120 days of receipt. House Bill 2007 changes this 120-day requirement to 100 days for affordable housing projects.

2. It directs the Department of Land Conservation and Development (DLCD) to study the average timeline between submission of a complete application and certificate of occupancy and identify barriers to shortening that timeline.

3. It will require cities and counties to approve applications that meet clear and objective standards as outlined in local zoning or planning codes within urban growth boundaries. I understand that some cities have concerns about having to state clear and objective standards, but I have also heard from cities that have no issue with this requirement because it is their status quo. It is possible to have a permitting process that allows for local control regarding design and clear and objective standards related to those design preferences.

4. It updates the definition of "needed housing" to include "housing that is affordable to low- and moderate-income people." This is important because cities need a better handle on their inventory of affordable housing compared to the need and identifying affordable housing as "needed" in state statute moves us forward.

5. It requires local jurisdictions to let developers build housing with density that is permitted in the local zoning code unless doing so poses a risk to health, safety, or habitability.

6. It clarifies that the historic designation process may not reduce "needed housing" which now includes affordable housing.

7. It prohibits outright bans on the development of accessory dwelling units (ADUs) and duplexes on land zoned for single-family housing.

8. Lastly, it allows religious organizations with land located within urban growth boundaries to build affordable housing within the conditions of local zoning and planning requirements.

You may note that the -1 amendment includes a directive for the state to create model housing designs. Those provisions will not be included in the -2 amendments.

House Bill 2007 is the product of extensive, productive conversations with developers, realtors, property owners, land use advocates, and housing policy experts about barriers to development. If passed, this bill will increase the supply of both affordable and market rate housing in Oregon.

Thank you.

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

HOUSE AMENDMENTS TO HOUSE BILL 2007

By COMMITTEE ON HUMAN SERVICES AND HOUSING

April 24

On page 1 of the printed bill, line 2, after "amending" delete the rest of the line and insert "ORS 197.303, 197.307, 197.312, 215.416, 215.427, 215.441, 227.175, 227.178 and 227.500; and".

Delete lines 5 through 24 and delete pages 2 through 5 and insert:

"**SECTION 1. (1) As used in this section:**

"(a) 'Affordable housing' means housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater.

"(b) 'Multifamily residential building' means a building in which two or more residential units each have space for eating, living and sleeping and permanent provisions for cooking and sanitation.

"(2) Notwithstanding ORS 215.427 (1) or ORS 227.178 (1), a city or a county shall take final action on an application qualifying under subsection (3) of this section, including resolution of all local appeals under ORS 215.422 or 227.180, within 100 days after the application is deemed complete.

"(3) An application qualifies for final action within the timeline described in subsection (2) of this section if:

"(a) The application is submitted to the city or the county under ORS 215.416 or 227.175;

"(b) The application is for development of a multifamily residential building containing five or more residential units within the urban growth boundary;

"(c) At least 50 percent of the residential units included in the development will be sold or rented as affordable housing; and

"(d) The development is subject to a covenant appurtenant that restricts the owner and each successive owner of the development or a residential unit within the development from selling or renting any residential unit described in paragraph (c) of this subsection as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.

"(4) A city or a county shall take final action within the time allowed under ORS 215.427 or 227.178 on any application for a permit, limited land use decision or zone change that does not qualify for review and decision under subsection (3) of this section, including resolution of all appeals under ORS 215.422 or 227.180, as provided by ORS 215.427 and 215.435 or ORS 227.178 and 227.181.

"**SECTION 2. (1) The Department of Land Conservation and Development shall study housing development, including but not limited to affordable housing, in cities. The study must:**

"(a) Determine for each city the average timeline between submission of a complete ap-

plication for a housing development and issuance of a certificate of occupancy for the housing development;

"(b) Analyze the impact of the timeline described in paragraph (a) of this subsection on the development process; and

"(c) Identify barriers to reducing the timeline described in paragraph (a) of this subsection for each city.

"(2) The department shall report the findings of the study to an interim committee of the Legislative Assembly:

"(a) For cities with populations greater than 25,000, no later than September 15, 2018.

"(b) For cities with populations of 25,000 or less, no later than September 15, 2019.

"**SECTION 3.** ORS 215.416 is amended to read:

"215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

"(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

"(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

"(4)**(a)** [*The application shall not be approved*] **A county may not approve an application** if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

"**(b) A county may not deny an application for a housing development located within the urban growth boundary if:**

"(A) The development complies with clear and objective standards contained in the comprehensive plan or zoning ordinances of the county; and

"(B) The county would have approved the application but for a finding that the development is inconsistent with any discretionary design review standards imposed by the county.

"(c) Paragraph (b) of this subsection does not apply to applications or permits for residential development in areas described in ORS 197.307 (5).

"(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

"(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a 'public use airport' if:

"(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

"(b) The property subject to the land use hearing is:

"(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon

Department of Aviation to be a 'visual airport'; or

"(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an 'instrument airport.'

"(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway 'approach surface' as defined by the Oregon Department of Aviation.

"(8)(a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

"(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

"(9) Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

"(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

"(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

"(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

"(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

"(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

"(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

"(i) The applicant and other parties shall have the same opportunity to present testimony, ar-

guments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

"(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

"(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

"(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

"(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

"(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

"(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

"(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

"(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

"(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

"(12) A decision described in ORS 215.402 (4)(b) shall:

"(a) Be entered in a registry available to the public setting forth:

"(A) The street address or other easily understood geographic reference to the subject property;

"(B) The date of the decision; and

"(C) A description of the decision made.

"(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

"(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

"(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

"(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828.

"**SECTION 4.** ORS 227.175 is amended to read:

"227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average

cost of providing that service.

"(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

"(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

"(4)**(a)** [*The application shall not be approved*] **A city may not approve an application** unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

"(b) A city may not deny an application for a housing development located within the urban growth boundary if:

"(A) The development complies with clear and objective standards contained in the comprehensive plan or zoning ordinances of the city; and

"(B) The city would have approved the application but for a finding that the development is inconsistent with any discretionary design review standards imposed by the city.

"(c) Paragraph (b) of this subsection does not apply to applications or permits for residential development in areas described in ORS 197.307 (5).

"(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

"(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a 'public use airport' if:

"(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

"(b) The property subject to the zone use hearing is:

"(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a 'visual airport'; or

"(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an 'instrument airport.'

"(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway 'approach surface' as defined by the Oregon Department of Aviation.

"(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

"(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

"(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other desig-

nated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

"(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

"(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

"(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

"(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

"(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

"(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

"(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

"(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

"(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

"(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

"(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

"(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

"(B) Notice shall also be provided to any neighborhood or community organization recognized

by the governing body and whose boundaries include the site.

"(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

"(11) A decision described in ORS 227.160 (2)(b) shall:

"(a) Be entered in a registry available to the public setting forth:

"(A) The street address or other easily understood geographic reference to the subject property;

"(B) The date of the decision; and

"(C) A description of the decision made.

"(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

"(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

"(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

"(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828.

"**SECTION 5.** ORS 197.303 is amended to read:

"197.303. (1) As used in ORS 197.307, 'needed housing' means **all** housing [*types*] **on land zoned for residential use or mixed residential and commercial use that is** determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels[*, including*]**. 'Needed housing' includes** [*at least*] the following housing types:

"(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

"(b) Government assisted housing;

"(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

"(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; [*and*]

"(e) Housing for farmworkers[.]**; and**

"(f) Housing that is affordable to households with low to moderate incomes relative to the area median income.

"(2) Subsection (1)(a) and (d) of this section [*shall*] **does** not apply to:

"(a) A city with a population of less than 2,500.

"(b) A county with a population of less than 15,000.

"(3) A local government may take an exception under ORS 197.732 to the definition of 'needed housing' in subsection (1) of this section in the same manner that an exception may be taken under the goals.

"**SECTION 6.** ORS 197.307 is amended to read:

"197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

"(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

"(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or

in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

"(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of **housing, including** needed housing [*on buildable land described in subsection (3) of this section*]. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of**:**

"(a) Discouraging needed housing through**:**

"(A) Unreasonable cost or delay[.]**; or**

"(B) Designation of a primarily residential neighborhood as a national historic district; or

"(b) Reducing the density of an application for a housing development where the density applied for is below the density authorized in the local zoning designation, unless the reduction is necessary to resolve a health, safety or habitability issue.

"(5) The provisions of subsection (4) of this section do not apply to:

"(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

"(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

"(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

"(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

"(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

"(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

"(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

"(a) Set approval standards under which a particular housing type is permitted outright;

"(b) Impose special conditions upon approval of a specific development proposal; or

"(c) Establish approval procedures.

"(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

"(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

"(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

"(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

"(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

"(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

"(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

"(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

"**SECTION 7.** ORS 197.312 is amended to read:

"197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

"(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

"(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

"(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

"(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

"(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

"**(5)(a) A city or a county may not prohibit the building of a duplex or an accessory dwelling unit in an area zoned for single-family dwellings located within the urban growth boundary.**

"(b) As used in this subsection:

"(A) 'Accessory dwelling unit' means a residential structure that is used in connection

with or that is accessory to a single family residential dwelling.

"(B) 'Duplex' means a multifamily structure containing two dwelling units.

"**SECTION 8.** ORS 215.441 is amended to read:

"215.441. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including [*worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.*]**:**

"(a) Worship services.

"(b) Religion classes.

"(c) Weddings.

"(d) Funerals.

"(e) Meal programs.

"(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

"(g) Providing housing or space for housing in a building that is detached from the place of worship, provided:

"(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located; and

"(B) The real property is located within the urban growth boundary.

"(2) A county may:

"(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

"(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

"(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

"(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.

"**SECTION 9.** ORS 227.500 is amended to read:

"227.500. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a city shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including [*worship services, reli-*

gion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.]:

"(a) Worship services.

"(b) Religion classes.

"(c) Weddings.

"(d) Funerals.

"(e) Meal programs.

"(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

"(g) Providing housing or space for housing in a building that is detached from the place of worship, provided:

"(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located; and

"(B) The real property is located within the urban growth boundary.

"(2) A city may:

"(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

"(b) Prohibit or regulate the use of real property by a place of worship described in subsection (1) of this section if the city finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

"(3) Notwithstanding any other provision of this section, a city may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

"(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.

"**SECTION 10.** ORS 215.427 is amended to read:

"215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

"(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing

information. The application shall be deemed complete for the purpose of subsection (1) of this section **and section 1 of this 2017 Act** upon receipt by the governing body or its designee of:

"(a) All of the missing information;

"(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

"(c) Written notice from the applicant that none of the missing information will be provided.

"(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

"(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

"(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

"(a) All of the missing information;

"(b) Some of the missing information and written notice that no other information will be provided; or

"(c) Written notice that none of the missing information will be provided.

"(5) The period set in subsection (1) of this section **or the 100-day period set in section 1 of this 2017 Act** may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

"(6) The period set in subsection (1) of this section applies:

"(a) Only to decisions wholly within the authority and control of the governing body of the county; and

"(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

"(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section **and the 100-day period set in section 1 of this 2017 Act do** [*does*] not apply to a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

"(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in

the consideration of the application.

"(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 215.429 **or section 1 of this 2017 Act** as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

"(10) The periods set forth in [*subsection (1)*] **subsections (1) and (5)** of this section **and section 1 of this 2017 Act** [*and the period set forth in subsection (5) of this section*] may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

"**SECTION 11.** ORS 227.178 is amended to read:

"227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

"(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section **or section 1 of this 2017 Act** upon receipt by the governing body or its designee of:

"(a) All of the missing information;

"(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

"(c) Written notice from the applicant that none of the missing information will be provided.

"(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

"(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

"(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

"(a) All of the missing information;

"(b) Some of the missing information and written notice that no other information will be provided; or

"(c) Written notice that none of the missing information will be provided.

"(5) The 120-day period set in subsection (1) of this section **or the 100-day period set in section 1 of this 2017 Act** may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

"(6) The 120-day period set in subsection (1) of this section applies:

"(a) Only to decisions wholly within the authority and control of the governing body of the city; and

"(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

"(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section **and the 100-day period set in section 1 of this 2017 Act do** [*does*] not apply to a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

"(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

"(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

"(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

"(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

"(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

"(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

"(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 **or section 1 of this 2017 Act** as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

"(11) The [*period*] **periods** set forth in [*subsection (1)*] **subsections (1) and (5)** of this section **and section 1 of this 2017 Act** [*and the period set forth in subsection (5) of this section*] may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

"**SECTION 12. Section 2 of this 2017 Act becomes operative on January 1, 2018.**

"**SECTION 13. Section 1 of this 2017 Act and the amendments to ORS 197.303, 197.307, 197.312, 215.416, 215.427, 215.441, 227.175, 227.178 and 227.500 by sections 3 to 11 of this 2017 Act apply to permit applications dated on or after the effective date of this 2017 Act.**

"**SECTION 14. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.**".

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

Enrolled
Senate Bill 1051

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

CHAPTER .....

AN ACT

Relating to use of real property; creating new provisions; amending ORS 197.178, 197.303, 197.307, 197.312, 215.416, 215.427, 215.441, 227.175, 227.178 and 227.500; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Affordable housing" means housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater.

(b) "Multifamily residential building" means a building in which three or more residential units each have space for eating, living and sleeping and permanent provisions for cooking and sanitation.

(2) Notwithstanding ORS 215.427 (1) or ORS 227.178 (1), a city with a population greater than 5,000 or a county with a population greater than 25,000 shall take final action on an application qualifying under subsection (3) of this section, including resolution of all local appeals under ORS 215.422 or 227.180, within 100 days after the application is deemed complete.

(3) An application qualifies for final action within the timeline described in subsection (2) of this section if:

(a) The application is submitted to the city or the county under ORS 215.416 or 227.175;

(b) The application is for development of a multifamily residential building containing five or more residential units within the urban growth boundary;

(c) At least 50 percent of the residential units included in the development will be sold or rented as affordable housing; and

(d) The development is subject to a covenant appurtenant that restricts the owner and each successive owner of the development or a residential unit within the development from selling or renting any residential unit described in paragraph (c) of this subsection as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.

(4) A city or a county shall take final action within the time allowed under ORS 215.427 or 227.178 on any application for a permit, limited land use decision or zone change that does not qualify for review and decision under subsection (3) of this section, including resolution of all appeals under ORS 215.422 or 227.180, as provided by ORS 215.427 and 215.435 or by ORS 227.178 and 227.181.

SECTION 2. ORS 215.416 is amended to read:

215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4)**(a)** [*The application shall not be approved*] **A county may not approve an application** if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(b)(A) A county may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.

(B) This paragraph does not apply to:

(i) Applications or permits for residential development in areas described in ORS 197.307 (5); or

(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (6).

(c) A county may not reduce the density of an application for a housing development if:

(A) The density applied for is at or below the authorized density level under the local land use regulations; and

(B) At least 75 percent of the floor area applied for is reserved for housing.

(d) A county may not reduce the height of an application for a housing development if:

(A) The height applied for is at or below the authorized height level under the local land use regulations;

(B) At least 75 percent of the floor area applied for is reserved for housing; and

(C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.

(e) Notwithstanding paragraphs (c) and (d) of this subsection, a county may reduce the density or height of an application for a housing development if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

(f) As used in this subsection:

(A) "Authorized density level" means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.

(B) "Authorized height level" means the maximum height of a structure that is permitted under local land use regulations.

(C) "Habitability" means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway "approach surface" as defined by the Oregon Department of Aviation.

(8)(a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(9) Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(12) A decision described in ORS 215.402 (4)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 3. ORS 227.175 is amended to read:

227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4)**(a)** [*The application shall not be approved*] **A city may not approve an application** unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(b)(A) A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the city comprehensive plan or land use regulations.

(B) This paragraph does not apply to:

(i) Applications or permits for residential development in areas described in ORS 197.307 (5); or

(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (6).

(c) A city may not reduce the density of an application for a housing development if:

(A) The density applied for is at or below the authorized density level under the local land use regulations; and

(B) At least 75 percent of the floor area applied for is reserved for housing.

(d) A city may not reduce the height of an application for a housing development if:

(A) The height applied for is at or below the authorized height level under the local land use regulations;

(B) At least 75 percent of the floor area applied for is reserved for housing; and

(C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.

(e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may reduce the density or height of an application for a housing development if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

(f) As used in this subsection:

(A) "Authorized density level" means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.

(B) "Authorized height level" means the maximum height of a structure that is permitted under local land use regulations.

(C) "Habitability" means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway "approach surface" as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home

or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 4. ORS 197.303 is amended to read:

197.303. (1) As used in ORS 197.307, "needed housing" means **all** housing [*types*] **on land zoned for residential use or mixed residential and commercial use that is** determined to meet the need shown for housing within an urban growth boundary at [*particular*] price ranges and rent levels[, *including*] **that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. "Needed housing" includes** [*at least*] the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(2) Subsection (1)(a) and (d) of this section [*shall*] **does** not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(3) A local government may take an exception under ORS 197.732 to the definition of "needed housing" in subsection (1) of this section in the same manner that an exception may be taken under the goals.

SECTION 5. ORS 197.307 is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of **hous-**

ing, including needed housing [*on buildable land described in subsection (3) of this section*]. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, ar-

chitectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

SECTION 6. ORS 197.312 is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection, "accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

SECTION 7. ORS 215.441 is amended to read:

215.441. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including [*worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.*]**:**

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

(g) Providing housing or space for housing in a building that is detached from the place of worship, provided:

(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;

(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and

(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.

(2) A county may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.

SECTION 8. ORS 227.500 is amended to read:

227.500. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a city shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including [*worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education.*]**:**

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

(g) Providing housing or space for housing in a building that is detached from the place of worship, provided:

(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;

(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and

(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.

(2) A city may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or regulate the use of real property by a place of worship described in subsection (1) of this section if the city finds that the level of service of public facilities, including transporta-

tion, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a city may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.

SECTION 9. ORS 197.178 is amended to read:

197.178. (1) Local governments with comprehensive plans or functional plans that are identified in ORS 197.296 (1) shall compile and report annually to the Department of Land Conservation and Development the following information for all applications received under ORS 227.175 for residential permits and residential zone changes:

(a) The **total** number of **complete** applications received for residential development, [*including the net residential density proposed in the application and the maximum allowed net residential density for the subject zone*] **and the number of applications approved**;

[*(b) The number of applications approved, including the approved net density; and*]

[*(c) The date each application was received and the date it was approved or denied.*]

(b) The total number of complete applications received for development of housing containing one or more housing units that are sold or rented below market rate as part of a local, state or federal housing assistance program, and the number of applications approved; and

(c) For each complete application received:

(A) The date the application was received;

(B) The date the application was approved or denied;

(C) The net residential density proposed in the application;

(D) The maximum allowed net residential density for the subject zone; and

(E) If approved, the approved net residential density.

(2) The report required by this section may be submitted electronically.

SECTION 10. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section **and section 1 of this 2017 Act** upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section **or the 100-day period set in section 1 of this 2017 Act** may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section **and the 100-day period set in section 1 of this 2017 Act do** [*does*] not apply to a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 215.429 **or section 1 of this 2017 Act** as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(10) The periods set forth in [*subsection (1)*] **subsections (1) and (5)** of this section **and section 1 of this 2017 Act** [*and the period set forth in subsection (5) of this section*] may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

SECTION 11. ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use de-

cision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section **or section 1 of this 2017 Act** upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section **or the 100-day period set in section 1 of this 2017 Act** may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section **and the 100-day period set in section 1 of this 2017 Act do** [*does*] not apply to a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 **or section 1 of this 2017 Act** as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The [*period*] **periods** set forth in [*subsection (1)*] **subsections (1) and (5)** of this section **and section 1 of this 2017 Act** [*and the period set forth in subsection (5) of this section*] may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

SECTION 12. The amendments to ORS 197.312, 215.416 and 227.175 by sections 2, 3 and 6 of this 2017 Act become operative on July 1, 2018.

SECTION 13. (1) Section 1 of this 2017 Act and the amendments to ORS 197.178, 197.303, 197.307, 215.427, 215.441, 227.178 and 227.500 by sections 4, 5 and 7 to 11 of this 2017 Act apply to permit applications submitted for review on or after the effective date of this 2017 Act.

(2) The amendments to ORS 215.416 and 227.175 by sections 2 and 3 of this 2017 Act apply to applications for housing development submitted for review on or after July 1, 2018.

(3) The amendments to ORS 197.312 by section 6 of this 2017 Act apply to permit applications for accessory dwelling units submitted for review on or after July 1, 2018.

SECTION 14. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by Senate April 19, 2017

Repassed by Senate July 7, 2017

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House July 6, 2017

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State

Intervenor-Petitioner Housing Land Advocates' Petition for Review

Appendix B

Excerpts from the Eugene-Springfield Metropolitan Area General Plan ("Metro Plan")

LUBA Nos. 2018-063 and -064

METRO PLAN
Eugene-Springfield Metropolitan Area General Plan

2004 Update

Eugene, Springfield, and Lane County

For information about the *Eugene-Springfield Metropolitan Area General Plan (Metro Plan)*, contact the following planning agencies:

City of Eugene
Eugene Planning Division
99 West 10th Avenue, Suite 240
Eugene, Oregon 97401
1-541-682-5481

City of Springfield
Development Services Department
225 5th Street
Springfield, Oregon 97477
1-541-726-3759

Lane County
Land Management Division
125 East 8th Avenue
Eugene, Oregon 97401
1-541-682-4061

Lane Council of Governments
99 East Broadway, Suite 400
Eugene, Oregon 97401-3111
1-541-682-4283

For *Metro Plan Replacement Pages* that contain on-going updates to the *Metro Plan*, contact Lane Council of Governments or visit the web site at www.lcog.org/metro.

B. Metropolitan Goals

The following Metropolitan Goals are listed under the applicable section in this chapter or in Chapter III (*Metro Plan* Elements) and Chapter IV (*Metro Plan* Review, Amendments, and Refinements).

Growth Management

1. Use urban, urbanizable, and rural lands efficiently.

2. Encourage orderly and efficient conversion of land from rural to urban uses in response to urban needs, taking into account metropolitan and statewide goals.

3. Protect rural lands best suited for non-urban uses from incompatible urban encroachment.

Residential Land Use and Housing

1. Provide viable residential communities so all residents can choose sound, affordable housing that meets individual needs.

Economic

1. Broaden, improve, and diversify the metropolitan economy while maintaining or enhancing the environment.

Environmental Resources

1. Protect valuable natural resources and encourage their wise management and proper use and reuse, reflecting their special natural assets.

2. Maintain a variety of open spaces within and on the fringe of the developing area.

3. Protect life and property from the effects of natural hazards.

4. Provide a healthy and attractive environment, including clean air and water, for the metropolitan population.

Willamette River Greenway, River Corridors, and Waterways

1. Protect, conserve, and enhance the natural, scenic, environmental, and economic qualities of river and waterway corridors.

Environmental Design

1. Secure a safe, clean, and comfortable environment which is satisfying to the mind and senses.

2. Encourage the development of the natural, social, and economic environment in a manner that is harmonious with our natural setting and maintains and enhances our quality of life.

3. Create and preserve desirable and distinctive qualities in local and neighborhood areas.

Transportation

1. Provide an integrated transportation and land use system that supports choices in modes of travel and development patterns that will reduce reliance on the automobile and enhance livability, economic opportunity, and the quality of life.

2. Enhance the Eugene-Springfield metropolitan area's quality of life and economic opportunity by providing a transportation system that is:

    - Balanced
    - Accessible
    - Efficient
    - Safe
    - Interconnected
    - Environmentally responsible
    - Supportive of responsible and sustainable development
    - Responsive to community needs and neighborhood impacts and
    - Economically viable and financially stable

Public Facilities and Services

1. Provide and maintain public facilities and services in an efficient and environmentally responsible manner.

2. Provide public facilities and services in a manner that encourages orderly and sequential growth.

Parks and Recreation Facilities

1. Provide a variety of parks and recreation facilities to serve the diverse needs of the community's citizens.

Historic Preservation

1. Preserve and restore reminders of our origin and historic development as links between past, present, and future generations.

Energy

1. Maximize the conservation and efficient utilization of all types of energy.

2. Develop environmentally acceptable energy resource alternatives.

Citizen Involvement

1. Continue to develop, maintain, and refine programs and procedures that maximize the opportunity for meaningful, ongoing citizen involvement in the community's planning and planning implementation processes consistent with mandatory statewide planning standards.

Metro Plan Review, Amendments, and Refinements

1. Ensure that the *Metro Plan* is responsive to the changing conditions, needs, and attitudes of the community.

Chapter III
Specific Elements

A. Residential Land Use and Housing Element

The Residential Land Use and Housing Element addresses the housing needs of current and future residents of the metropolitan area. Land in residential use occupies the largest share of land within the urban growth boundary (UGB). The existing housing stock and residential land supply and its relationship to other land uses and infrastructure are critical to the future needs of all residents.

This element addresses Statewide Planning Goal 10: Housing, "To provide for the housing needs of the citizens of the state." Housing demand originates with the basic need for shelter but continues into the realm of creating communities. The policies contained in this element are based on an analysis of land supply and housing demand, existing housing problems, and the demographic characteristics of the expected future population. Factors that were reviewed to develop a projection of future housing demand were: projected number of households; household income, age, size, and type; and special housing needs. The background material for this analysis is contained in two documents, the *1999 Supply and Demand Technical Analysis* and the *1999 Site Inventory Document.*

The policies in this element provide direction for the local jurisdictions in preparing zoning and development regulations to address future housing needs. Each jurisdiction will be responsible to implement the policies contained in the Residential Land Use and Housing Element. At the time of the annual monitoring report, information on progress made to realize this policy direction will be made available. As local jurisdictions implement this element of the *Metro Plan*, they will analyze the suitability of residential designations in terms of density and location and, based on this analysis, may propose changes to the *Metro Plan* Diagram.

Goal

Provide viable residential communities so all residents can choose sound, affordable housing that meets individual needs.

Findings and Policies

The findings and policies in this element are organized by the following seven topics related to housing and residential land:

- Residential Land Supply and Demand
- Residential Density
- Housing Type and Tenure
- Design and Mixed Use

uses, such as parking lots and single-family dwellings are being replaced with higher density, multi-family development.

10. Since the last Periodic Review of the *Metro Plan* in 1987, there have been only two minor expansions of the UGB for residentially designated land. Each expansion was less than one acre in size.

11. The UGB defines the extent of urban building and service expansion over the planning period. There are geographic and resource constraints that will limit expansion of the UGB in the future. At such time that expansion is warranted, it will be necessary to cross a river, develop agricultural land, or cross over a ridge where the provision of public services and facilities will be expensive.

12. Since adoption of the *Metro Plan*, the supply of residential lands has been reduced as a result of compliance with federal, state, and local regulations to protect wetlands, critical habitat of endangered/threatened species, and other similar natural resources. This trend is likely to continue in order to meet future Statewide Planning Goal 5 and stormwater quality protection requirements.

13. Springfield charges a system development charge for stormwater, wastewater, and transportation. Willamalane Park and Recreation District charges a system development charge for parks. Springfield Utility Board (SUB) charges for water. Eugene charges for stormwater, wastewater, parks, and transportation. Eugene Water & Electric Board (EWEB) charges for water. These charges could be increased in some cases. Currently, state law does not include local systems development charges for fire and emergency medical service facilities and schools. Depending on market conditions, residents of newly constructed housing also pay for services and facilities they receive through local assessment districts, connection charges, direct investment in public infrastructure, and property taxes.

Policies

A.1 Encourage the consolidation of residentially zoned parcels to facilitate more options for development and redevelopment of such parcels.

A.2 Residentially designated land within the UGB should be zoned consistent with the *Metro Plan* and applicable plans and policies; however, existing agricultural zoning may be continued within the area between the city limits and the UGB until rezoned for urban uses.

A.3 Provide an adequate supply of buildable residential land within the UGB for the 20-year planning period at the time of Periodic Review.

A.4 Use annexation, provision of adequate public facilities and services, rezoning, redevelopment, and infill to meet the 20-year projected housing demand.

A.5 Develop a monitoring system that measures land consumption, land values, housing type, size, and density. Reports should be made to the community on an annual basis.

A.6 Eugene, Springfield, and Lane County shall encourage a community dialogue, when the annual monitoring report on land supply and housing development is made public, to address future Periodic Review requirements that relate to meeting the residential land supply needs of the metropolitan area.

A.7 Endeavor to provide key urban services and facilities required to maintain a five-year supply of serviced, buildable residential land.

A.8 Require development to pay the cost, as determined by the local jurisdiction, of extending public services and infrastructure. The cities shall examine ways to provide subsidies or incentives for providing infrastructure that support affordable housing and/or higher density housing.

Residential Density

Findings

14. Housing costs are increasing more rapidly than household income. With rising land and housing costs, the market has been and will continue to look at density as a way to keep housing costs down.

15. Recently approved subdivisions are achieving lot sizes on flat land averaging 7,400 square feet in Eugene and 7,800 square feet in Springfield. Comparing the net density[4] of all Eugene-Springfield metropolitan single family-detached units in 1986 and 1994 indicates that in 1986 the net density was 4.12 units per acre which equates to a 10,573 square foot lot while in 1994, the net density was 4.18 units per acre or a 10,410 square foot lot. These trends indicate that development in low-density is achieving assumed density expectations.

16. Although single-family detached lot sizes are decreasing, the *Metro Plan* targeted residential densities for all new development are not being achieved at this time. The *Metro Plan* assumes a net density of 8.57 units per acre (note: translation from 6 units per gross acre[5]) for new development over the planning period. For new dwelling units constructed during 1986 to 1994, the net density was 7.05 units per acre based on the Regional Land Information Database of Lane County (RLID). The estimated average overall residential net density for all residential development has climbed from 5.69 units per acre in 1986 to 5.81 units per acre in 1994.

[4] Density (Net): The number of dwelling units per each acre of land, excluding areas devoted to dedicated streets, neighborhood parks sidewalks, and other public facilities.
[5] Density (Gross): The number of dwelling units per each acre of land, including areas devoted to dedicated streets, neighborhood parks, sidewalks, and other public facilities.

17. Both Springfield and Eugene have adopted smaller minimum lot size requirements to allow increased density in low-density residentially designated areas. Even so, density in low-density residentially designated areas does not routinely achieve the higher range of low-density zoning (near 10 units/gross acre) due to the current market and the area requirements for other site improvements such as streets.

18. Offering incentives (e.g., reduced parking requirements, tax abatements) for increased density has not been completely successful in this metro area. In areas where some increase in density is proposed, there can be neighborhood opposition.

Policies

A.9 Establish density ranges in local zoning and development regulations that are consistent with the broad density categories of this plan.

> Low density: Through 10 dwelling units per gross acre (could translate up to 14.28 units per net acre depending on each jurisdictions implementation measures and land use and development codes)
>
> Medium density: Over 10 through 20 dwelling units per gross acre (could translate to over 14.28 units per net acre through 28.56 units per net acre depending on each jurisdictions implementation measures and land use and development codes)
>
> High density: Over 20 dwelling units per gross acre (could translate to over 28.56 units per net acre depending on each jurisdiction's implementation measures and land use and development codes)

A.10 Promote higher residential density inside the UGB that utilizes existing infrastructure, improves the efficiency of public services and facilities, and conserves rural resource lands outside the UGB.

A.11 Generally locate higher density residential development near employment or commercial services, in proximity to major transportation systems or within transportation-efficient nodes.

A.12 Coordinate higher density residential development with the provision of adequate infrastructure and services, open space, and other urban amenities.

A.13 Increase overall residential density in the metropolitan area by creating more opportunities for effectively designed in-fill, redevelopment, and mixed use while considering impacts of increased residential density on historic, existing and future neighborhoods.

A. 14 Review local zoning and development regulations periodically to remove barriers to higher density housing and to make provision for a full range of housing options.

A.15 Develop a wider range of zoning options such as new zoning districts, to fully utilize existing *Metro Plan* density ranges.

A. 16 Allow for the development of zoning districts which allow overlap of the established *Metro Plan* density ranges to promote housing choice and result in either maintaining or increasing housing density in those districts. Under no circumstances, shall housing densities be allowed below existing *Metro Plan* density ranges.

Housing Type and Tenure

Findings

19. Based on 1990 Census data for the Eugene area, there is a relationship between household income, size of household, age of household head, and housing choices people make regarding type and tenure. The trends established are as follows: lower income and increasingly moderate-income, primarily young and single-person households tend to be renters. Ownership increases as income and family size increase. Older households predominately remain in owner-occupied, single-family housing, but as the age of the head of household reaches 65, ownership rates begin to decline.

20. Based on the ECO Northwest/Leland Study, *What is the Market Demand for Residential Real Estate in Eugene/Springfield?* (October 1996) a larger share of the future population will be composed of smaller, older, and less affluent households. This will alter housing market demand in many ways over the next 20 years. Married couple families with children will no longer be the predominate household type of the residential market. Singles, childless couples, divorcees, and single parents will be a much larger proportion of the market than in the past. To meet the needs of these households, more choices in housing types (both for sale and for rent) than currently exist will be necessary.

21. Based on Lane County assessment data, in the 1980s and 1990s, there was a shift to larger, single-family detached homes, even through the average number of persons per household has been declining.

22. Between 1989 and 1998, 45 percent of all new housing was single-family detached including manufactured units on lots. As of 1998, about 59 percent of all dwelling units were single-family detached. This represents a decrease in the share of single-family detached from 61 percent in 1989.

Policies

A.17 Provide opportunities for a full range of choice in housing type, density, size, cost, and location.

A.18 Encourage a mix of structure types and densities within residential designations by reviewing and, if necessary, amending local zoning and development regulations.

A.19 Encourage residential developments in or near downtown core areas in both cities.

A.20 Encourage home ownership of all housing types, particularly for low-income households.

A.21 Allow manufactured dwelling parks as an outright use in low-density residential zones if the local jurisdiction's prescribed standards are met.

Design and Mixed Use[6]

Findings

23. Mixed-use development (residential with commercial or office) has the potential to reduce impacts on the transportation system by minimizing or eliminating automobile trips.

24. Mixed use may be seen as a threat to predominantly residential development. Standards on siting and use and design review are seen as ways to mitigate negative impacts.

25. In-home business and telecommuting are becoming more common. The market for combining home and office uses will continue to increase.

26. While people generally are open to the concept of higher density, they are still concerned about how density will affect their neighborhood in terms of design, increased traffic, and activity. With higher densities, people need more local parks and open space.

27. The metropolitan area enjoys a wide variety of open spaces, natural areas, and livable neighborhoods. As density increases, design and landscaping standards and guidelines maybe necessary to maintain community livability and aesthetics, as well as making density more acceptable.

Policies

A.22 Expand opportunities for a mix of uses in newly developing areas and existing neighborhoods through local zoning and development regulations.

A.23 Reduce impacts of higher density residential and mixed-use development on surrounding uses by considering site, landscape, and architectural design standards or guidelines in local zoning and development regulations.

A.24 Consider adopting or modifying local zoning and development regulations to provide a discretionary design review process or clear and objective design standards, in order to address issues of compatibility, aesthetics, open space, and other community concerns.

[6] Mixed use: A building, project or area of development that contains at least two different land uses such as housing, retail, and office uses

Existing Housing Supply and Neighborhoods

Findings

28. Accommodating residential growth within the current UGB encourages in-fill, rehabilitation, and redevelopment of the existing housing stock and neighborhoods.

29. As the age of the housing stock reaches 25 years, the need for rehabilitation, weatherization, and major system upgrades increases. Approximately 59 percent of the single-family housing stock was built prior to 1969.

30. More renters than owners live in sub-standard housing conditions. Based on the *1995 Eugene/Springfield Consolidated Plan*, about 16 percent of all occupied rental units of the metropolitan housing stock are considered to be in sub-standard condition.

31. Local government has had and will continue to have a role in preserving the aging housing stock. Preserving the housing stock has numerous benefits to the community because much of the older housing stock represents affordable housing. In addition, upgrading the aging housing stock provides benefits that help stabilize older neighborhoods in need of revitalization.

Policies

A.25 Conserve the metropolitan area's supply of existing affordable housing and increase the stability and quality of older residential neighborhoods, through measures such as revitalization; code enforcement; appropriate zoning; rehabilitation programs; relocation of existing structures; traffic calming; parking requirements; or public safety considerations. These actions should support planned densities in these areas.

A.26 Pursue strategies that encourage rehabilitation of existing housing and neighborhoods.

Affordable[7], Special Need[8], and Fair Housing

Finding

32. Substantial and continued federal funding reductions for housing assistance are increasing the burden on local governments. The high cost of housing for low-income

[7] Affordable housing: Housing priced so that a household at or below median income pays no more than 30 percent of its total gross income on housing and utilities. [U.S. Department of Housing and Urban Development's (HUD) figure for 1997 annual median income for a family of three in Lane County is $33,900; 30 percent = $847/month.]

[8] Special need housing: Housing for special needs populations. These populations represent some unique sets of housing problems and are usually at a competitive disadvantage in the marketplace due to circumstances beyond their control. These subgroups include, but are not limited to, the elderly, persons with disabilities, homeless individuals and families, at-risk youth, large families, farm workers, and persons being released from correctional institutions.

families directly correlates with an increasing demand for other support services such as food supplement programs and utility assistance. The high cost of housing results in homelessness for some households. Homelessness directly and indirectly negatively impacts public health, public safety, and public education systems in multiple, measurable ways.

33. The next 20 years are expected to see increased need for apartments and single family housing for low[9] and very low[10] income households. Based on the 1990 Census, approximately 20 percent of all households are currently classified as very low-income.

34. There is a shortage of unconstrained medium and high density zoned sites, for sale, that are flat and serviced with utilities. This is particularly true in Eugene. Low income projects frequently must use density bonuses or other land use incentives that require additional land use processes such as public hearings, which exposes the project to longer timelines and appeals.

35. Based on the *1995 Eugene/Springfield Consolidated Plan*, in Eugene and Springfield, 35 percent of households experience housing problems (defined by HUD as overcrowded, substandard, or the household is paying over 30 percent of its income for housing and utilities). The predominate housing problem is that households are paying more than they can afford for housing.

36. The de-institutionalization of people with disabilities, including chronic mental illness, has continued since the 1980's and adds to the number of homeless, poorly housed, and those needing local support services and special need housing.

37. Based on the annual one-night Lane County shelter/homeless counts, the number of homeless people is increasing and a third of the homeless are children.

38. Demographics point to an increasing proportion of the population over 65 years of age in the future. This will require more housing that can accommodate the special needs of this group.

39. Construction of housing with special accommodations or retrofitting existing housing drives up the occupancy costs for the tenant. Tenants with special needs typically have low incomes and are less able to pay increased rents.

40. Existing land use regulations do not easily accommodate the establishment of alternative and innovative housing strategies, such as group recovery houses and homeless shelters.

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[9] Low income housing: Housing priced so that a household at or below 80 percent of median income pays no more than 30 percent of its total gross household income on housing and utilities. (HUD's figure for 1997 annual 80 percent of median for a family of three in Lane County is $27,150; 30 percent = $678/month.)

[10] Very low income housing: Housing priced so that a household at or below 50 percent of median income pays no more than 30 percent of its total gross household income on housing and utilities. (HUD's figure for 1997 annual 50 percent of median of a family of three in Lane County is $16,950; 30 percent = $423/month.)

41. Existing emergency shelters do not have the capability to serve the entire homeless population. This results in people illegally inhabiting residential neighborhoods and non-residentially zoned areas. The challenges facing homeless people are increased when they are forced far out of the urban areas where resources, training, treatments, and job opportunities are less available.

42. Practices of some cultures, such as Latino and Asian households, conflict with existing public policies that limit a household to five unrelated adults, and private rental practices that limit occupancy to two people per bedroom.

43. Fair housing issues typically impact renters more often than homebuyers and discrimination tends to increase when the vacancy rate decreases.

Policies

A.27 Seek to maintain and increase public and private assistance for low- and very low-income households that are unable to pay for shelter on the open market.

A.28 Seek to maintain and increase the supply of rental housing and increase home ownership options for low- and very low-income households by providing economic and other incentives, such as density bonuses, to developers that agree to provide needed below-market and service-enhanced housing in the community.

A.29 Consider public purposes such as low- and very low-income housing when evaluating UGB expansions.

A.30 Balance the need to provide a sufficient amount of land to accommodate affordable housing with the community's goals to maintain a compact urban form.

A.31 Consider the unique housing problems experienced by special needs populations, including the homeless, through review of local zoning and development regulations, other codes and public safety regulations to accommodate these special needs.

A.32 Encourage the development of affordable housing for special needs populations that may include service delivery enhancements on-site.

A.33 Consider local zoning and development regulations impact on the cost of housing.

A.34 Protect all persons from housing discrimination.

Coordination

Findings

44. All three general purpose governments in the metropolitan area implement housing programs and coordinate their housing planning and implementation activities.

45. In the Eugene-Springfield metropolitan area, public, private non-profit and private for profit developers work closely with the cities to develop low-income housing.

Policies

A.35 Coordinate local residential land use and housing planning with other elements of this plan, including public facilities and services, and other local plans, to ensure consistency among policies.

A.36 Coordinate public, private, and consumer sectors of the area's housing market, including public-private partnerships, to promote housing for low- and very low- income households and to increase housing density and types.

A.37 Consider the suggested implementation measures in the *Residential Lands and Housing Study* and other measures in order to implement the policy directives of the Residential Land Use and Housing Element of the *Metro Plan*.

Intervenor-Petitioner Housing Land Advocates' Petition for Review

Appendix C

Excerpts from the Envision Eugene Comprehensive Plan ("Comprehensive Plan")

LUBA Nos. 2018-063 and -064

Table of Contents[1]

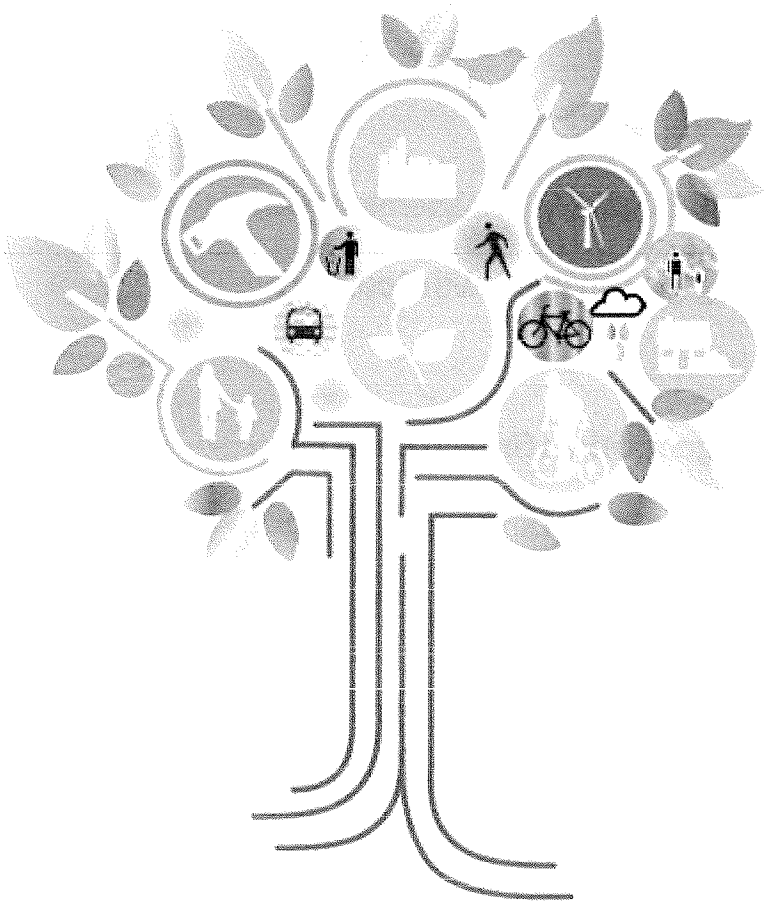
[1] Policies associated with topics in grayed out chapters can be found in the Eugene-Springfield Metropolitan Area General Plan (Metro Plan). Future phases of the Envision Eugene Comprehensive Plan will include Eugene-specific policies to address these areas.

Closing

The Envision Eugene Comprehensive Plan translates the values of our community into land use policy. Some of those values come from our local community, articulated through the Envision Eugene pillars.

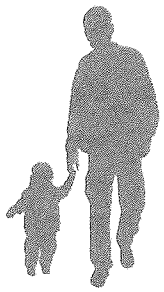
1. Provide ample ECONOMIC OPPORTUNITIES for all community members
2. Provide HOUSING AFFORDABLE to all income levels
3. Plan for CLIMATE CHANGE and ENERGY RESILIENCY
4. Promote COMPACT URBAN DEVELOPMENT and EFFICIENT TRANSPORTATION OPTIONS
5. Protect, repair and enhance NEIGHBORHOOD LIVABILITY
6. Protect, restore and enhance NATURAL RESOURCES
7. Provide for ADAPTABLE, FLEXIBLE and COLLABORATIVE implementation

Other values come from our state-wide community, and the way we as Oregonians have chosen to care for our resources. While certain chapters, goals or policies may be more obviously related to some values than others, the common foundation of all values are reflected throughout the plan. Over time, these policies can shape our city, bringing us closer to realizing the goals of our community.



3. **Community Vitality**

   Provide appropriate support for the variety of distinct economic activity centers in the community, including downtown Eugene, key corridors and core commercial areas, neighborhood business districts, and the region as a multijurisdictional entity.



"Broaden and diversify the Eugene economy..."

The policies guiding economic development are organized into the following topic areas:

- **Overall Economic Development Objectives**
- **Targeted Industries**
- **Land Supply**
- **Short-term Land Supply**
- **Infrastructure, Facilities and Transportation Planning**
- **Downtown, Key Corridors and Core Commercial Areas**

Policies

Overall Economic Development Objectives – *Policies in this section focus on issues that are a priority for the community as a whole.*

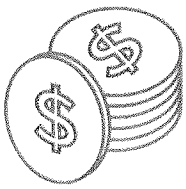
3.1 **Employment growth**. Plan for an employment growth rate that is identified in the current adopted Economic Opportunities Analysis. Strive to capture a majority of the region's employment growth within the City of Eugene.

3.2 **Economic advantages**. Strengthen and capitalize on Eugene's comparative economic advantages, including:

- Our highly educated and skilled workforce
- Partnerships with the University of Oregon, Lane Community College and other educational institutions
- Growing national presence in the specialty food and beverage, software, heavy machinery, advanced materials, and wood products industries
- Access to natural resources and open spaces
- High quality of life

3.3 **Expanding Eugene's assets**. Recognize and enhance special areas of strength and local assets that attract sectors such as tourism, hospitality, and retirement living. These include:

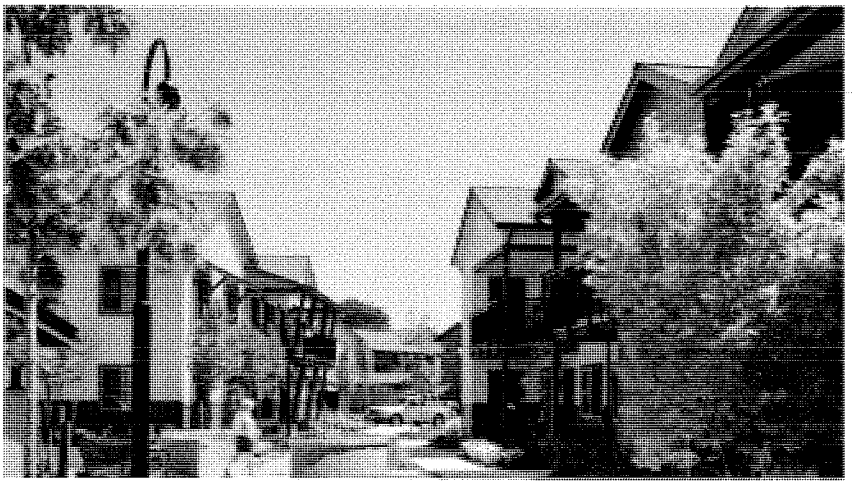
- A healthy, outdoor-oriented lifestyle and Track Town USA branding



"Encourage business development that leads to a higher employment rate and an economic climate where business ventures grow and thrive..."

1. **Clear and Effective Process**

   Administer the Envision Eugene Comprehensive Plan efficiently, effectively, and in accordance with state laws and goals, through processes that are clear and accessible to the community.



2. **Adaptability and Responsiveness**

   Provide mechanisms for amending and updating the Envision Eugene Comprehensive Plan and its implementation programs and tools to reflect the changing conditions, needs and attitudes of the community.

3. **Coordination and Collaboration with Partners**

   Align planning efforts with local and regional jurisdictions and agencies in support of the goals and values of the community as expressed in the Envision Eugene Comprehensive Plan.

The policies guiding administration and implementation are organized into the following topic areas:

- **Administration**
- **Implementation**
- **Monitoring**

Policies

Administration – *Policies in this section address the legal responsibilities of maintaining and updating this plan.*

10.1 **Comprehensive Plan amendments**. Periodically review factual information regarding Eugene's growth and, if necessary, make corresponding amendments to the Envision Eugene Comprehensive Plan. Amendments may include updates or additions to policies and supporting text, changes to the urban growth boundary, changes to land use regulations and incentives, or changes to the land use designation map.

10.2 **Comprehensive Plan review process**. Process the review and recommendations for proposed amendments to the Envision Eugene Comprehensive Plan and its implementation measures through the City of Eugene Planning Commission and City Council (and through Lane County when necessary) in accordance with the procedures set out in Chapter 9 of the Eugene Code.

10.3 **School facility planning**. The Eugene School District 4J Facilities Long-Range Plan and the Bethel School District Long Range Facilities Plan adopted by the school districts in consultation with the City of Eugene serve as an element of this comprehensive plan, meaning that those school district plans form the basis for school facility planning in the Eugene urban growth boundary.

10.4 **Local planning coordination**. Collaborate with local planning partners, both among City staff and beyond, to enhance alignment between the Envision Eugene Comprehensive Plan and other planning efforts in the region.

Implementation – *Policies in this section outline key strategies for achieving the community vision, goals and policies.*

10.5 **Implementation tools**. Utilize a broad spectrum of tools to implement

the policies of the Envision Eugene Comprehensive Plan, including facilitative, regulatory, and financial tools developed through a public planning process.

10.6 **Community partnerships**. Continue to plan collaboratively with partner agencies to develop implementation and planning efforts that reflect the community vision and make efficient use of regional resources.

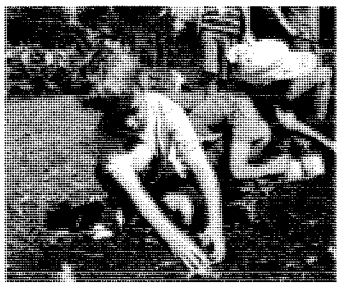
10.7 **Code Improvement Program**. Create and maintain a program for the evaluation and regular adjustment of regulations in Eugene's Land Use Code through collaborative, ongoing code improvement.

Monitoring – *Policies in this section identify the goals and overall process of the City's monitoring efforts.*[3]

10.8 **Quality-of-life indicators**. Develop and maintain monitoring efforts that provide a means for evaluating whether development is achieving Envision Eugene's more qualitative goals and objectives, such as creating walkable, compatible and affordable neighborhoods and a beautiful, active and prosperous downtown and key corridors. A diverse set of interested parties, such as City boards and commissions, the (growth monitoring) technical advisory committee, and community and neighborhood groups will be involved in developing the analysis and reviewing the results.

10.9 **Growth Monitoring Program**. Develop and maintain a Growth Monitoring Program that shall include such components as: data collection, analysis and reporting, consideration of actions to address the data, and evaluation of the Growth Monitoring Program itself. Examples of relevant data and trends to be collected/monitored include, but are not limited to:

- Official population forecasts
- Housing trends such as the mix of housing types, housing density and housing affordability
- Economic development trends such as employment growth rate
- Rate of development of the city's employment and residential land



"Develop and maintain monitoring efforts that provide a means for evaluating whether development is achieving Envision Eugene's more qualitative goals and objectives, such as creating walkable, compatible and affordable neighborhoods and a beautiful, active and prosperous downtown and key corridors."

[3] The City's monitoring efforts will include both quantitative and qualitative assessmer growth and development. Monitoring is integral to a responsive, adaptable, and trans policies in this section initiate these efforts through commitments to specific monitori

- The number of homes or jobs developed through the city's growth management or "efficiency" strategies

10.10 **Growth Monitoring Program reporting**. The City Manager shall report to the City Council and the community on relevant Growth Monitoring Program data as follows:

- Provide an annual report on key data
- Provide a comprehensive report three years after the Eugene-specific urban growth boundary has been acknowledged by the State and, thereafter, every five years
- Provide additional reports on an as-needed basis

10.11 **Growth Monitoring Program analysis**. The City's review and analysis of Growth Monitoring Program data shall include input from an advisory committee appointed by the City Manager, as well as other interested parties, boards and commissions, such as the Planning and Sustainability Commissions. The advisory committee shall be comprised of community members with diverse interests and areas of technical expertise concerning growth management.

10.12 **Growth Monitoring Program evaluation**. The Growth Monitoring Program shall include a schedule for its periodic evaluation so that it is adaptable to changing needs and trends and to enhance its efficiency, accuracy and achievement of key program objectives. Key objectives are to:

- Have growth-related data that is complete and relevant to future needs
- Efficiently collect the growth-related data
- Provide growth-related information to the community
- Regularly assess current status of the City's land supply
- Regularly assess the effectiveness of land use efficiency strategies
- Identify growth planning trends
- Regularly assess and adjust the program in response to changing needs

Intervenor-Petitioner Housing Land Advocates' Petition for Review

Appendix D

Excerpts from the City of Eugene's Zoning Code (Unamended)

LUBA Nos. 2018-063 and -064

9.2751 Special Development Standards for Table 9.2750.

(1) Density.

(a) The minimum residential density requirements set forth in Table 9.2750 do not apply to:

1. Attached secondary dwellings in R-1;
2. Lots zoned R-2 that are less than a half-acre (21,780 square feet) and that were created before August 24, 2017;
3. Lots or development sites in the R-3 or R-4 zones that are developed and are 13,500 square feet or less in size;
4. Lots within a /# overlay zone as described in EC 9.4050 to EC 9.4065; or
5. Dwellings exclusively for low income individuals and/or families where all units are subsidized. For this purpose, low income means having income at or below 80 percent of the area median income as defined by the U.S. Department of Housing and Urban Development. For these types of dwellings the minimum density is 10 units per net acre.

(Refer to Table 9.2750 Residential Zone Development Standards for the required net area per dwelling unit.)

(b) For purposes of this section, "net density" is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development, such as common open space or recreation facilities.

(c) For purposes of calculating net density:

1. The acreage of land considered part of the residential use shall exclude public and private streets and alleys, public parks, and other public facilities.
2. In calculating the minimum net density required for a specific lot or development site, the planning director shall round down to the previous whole number.
3. In calculating the maximum net density allowed for a specific lot or development site the planning director shall round up to the next whole number only for:
   a. A lot or development site that is 13,500 square feet or more in area;
   b. A lot or development site that is not abutting the boundary of, or directly across an alley from land zoned R-1; and
   c. Fractions of .75 or above.

   In all other circumstances, the planning director shall round down to the previous whole number.
4. At the request of the developer, the acreage described in 1., above, also may exclude natural or historic resources. For purposes of this section, natural resources include those designated for protection in an adopted plan and the area within natural resources protection or conservation setbacks that have been applied to the development site. For purposes of this section, historic resources include historic property and resources identified in an official local inventory as “primary” or “secondary.” It may also include additional natural or historic resources upon

apply to all new accessory buildings associated with a dwelling in the R-1 zone within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association:

1. In addition to any accessory buildings legally established prior to April 12, 2014, one accessory building is allowed.
2. The accessory building shall not exceed 400 square feet in area.
3. Building Height/Interior Setback.
    a. The interior yard setbacks shall be at least 5 feet from the interior lot lines. In addition, at a point that is 8 feet above finished grade, the setbacks shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot lines until a point not to exceed a maximum building height of 18 feet.
    b. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in a. above, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.

(See Figure 9.2751(16)(b)3.)

4. An accessory building greater than 200 square feet in area shall have a minimum roof pitch of 6 inches vertically for every 12 inches horizontally.
5. No accessory building shall be rented, advertised, represented or otherwise used as an independent dwelling.
6. The accessory building shall not include more than one plumbing fixture.
7. For an accessory building with one plumbing fixture, prior to the city's issuance of a building permit for the accessory building, the owner shall provide the city with a copy of a deed restriction on a form approved by the city that has been recorded with the Lane County Clerk. The deed restriction must include the following statements:
    a. The accessory building shall not be rented, advertised, represented or otherwise used as an independent dwelling.
    b. If the property owner is unable or unwilling to fulfill the requirements of the Eugene Code for use of the accessory building, then the property owner shall discontinue the use and remove the plumbing fixture from the building.
    c. Lack of compliance with the above shall be cause for code enforcement under the provisions of the applicable Eugene Code.
    d. The deed restriction shall lapse upon removal of the accessory building or removal of the plumbing fixture. The City must approve removal of deed restriction.
    e. The deed restriction shall run with the land and be binding upon the property owner, heirs and assigns and is binding upon any successor in ownership of the property.

(17) Secondary Dwellings in R-1.

(a) General Standards for Attached Secondary Dwellings. Except as provided in subsection (c) below, secondary dwellings that are within the

same building as the primary dwelling shall comply with all of the following:

1. Lot Area. To allow a secondary dwelling, flag lots shall contain at least 12,500 square feet, excluding the pole portion of the lot, and shall have a minimum pole width as required under EC 9.2775(5)(e). All other lots shall contain at least 6,100 square feet.
2. Building Size. The total building square footage of a secondary dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.
3. Building Height/Interior Setback. Except for secondary dwellings on flag lots (see EC 9.2775), the following standards apply:
   a. For attached secondary dwellings located within 60 feet of a front lot line, interior yard setbacks shall be at least 5 feet, and maximum building height shall be limited to that of the main building as per Table 9.2750
   b. For attached secondary dwellings located greater than 60 feet of a front lot line, interior yard setbacks shall be at least 5 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line to a maximum building height of 18 feet. **(See Figure 9.2751(16)(b)3.)**
   c. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in subsections a. and b. above, except that eaves and chimneys are allowed to project into this setback no more than 2 feet.
4. Minimum Attachment. The secondary dwelling and the primary dwelling must share a common wall or ceiling for a minimum length of 8 feet to be considered attached.
5. Maximum Bedrooms. The secondary dwelling shall contain no more than 2 bedrooms.
6. Dog Keeping. No more than 3 dogs shall be permitted on the lot, not including the temporary keeping of one additional dog for up to 6 months in any 12-month period.
7. Ownership/Occupancy Requirements. Either the primary dwelling or the secondary dwelling shall be the principal residence of the property owner. The principal residence must be occupied for a minimum of 6 months of each calendar year by a property owner who is the majority owner of the property as shown in the most recent Lane County Assessor's roll. If there is more than one property owner of record, the owner with the majority interest in the property shall be deemed the property owner. Any property owner of record holding an equal share in the property may be deemed the majority owner if no other owner owns a greater interest. The principal residence cannot be leased or rented when

not occupied by the property owner. Prior to the city's issuance of the building permit for the secondary dwelling (or the primary dwelling if it is constructed later) the property owner must provide the city with a copy of the property deed to verify ownership and two forms of documentation to verify occupancy of the primary residence. Acceptable documentation for this purpose includes voter's registration, driver's license, homeowner's insurance, income tax filing, and/or utility bill. When both the primary and secondary dwelling are constructed at the same time, such documentation must be provided prior to final occupancy.

8. Temporary Leave. Notwithstanding subsection 7. above, a property owner may temporarily vacate the principal residence for up to one year due to a temporary leave of absence for an employment, educational, volunteer opportunity, or medical need. The property owner must provide the city proof of temporary leave status from the property owner's employer, educational facility, volunteer organization or medical provider, and a notarized statement that the property owner intends to resume occupancy of the principal residence after the one year limit. During the temporary leave, the property owner may rent or lease both units on the property. Leaves in which property owner is temporarily absent shall not be consecutive and shall not occur more than once every 5 years. This standard may be adjusted in accordance with EC 9.8030(34).
9. Deed Restriction. Prior to issuance of a building permit for the secondary dwelling (or the primary dwelling if it is constructed later), the owner shall provide the city with a copy of a deed restriction on a form approved by the city that has been recorded with the Lane County Clerk. The deed restriction must include a reference to the deed under which the property was acquired by the present owner and include the following provisions:
    a. One of the dwellings must be the principal residence of a property owner who is the majority owner of the property. Requirements for occupancy shall be determined according to the applicable provisions of the Eugene Code.
    b. The deed restriction runs with the land and binds the property owner(s), heirs, successors and assigns.
    c. The deed restriction may be terminated, upon approval by the city, when one of the dwellings is removed, or at such time as the city code no longer requires principal occupancy of one of the dwellings by the owner.
10. Verification. At least once every two years, the property owner shall provide to the city documentation of compliance with the ownership and occupancy requirements of subsection 7. above. The property owner must provide a copy of the current property deed to verify ownership and two forms of documentation to verify occupancy of the principal residence. Acceptable documentation for this purpose includes voter's registration, driver's license, homeowner's insurance, income tax filing, and/or utility bill.
11. Additional Standards for Secondary Dwellings on Flag Lots.

Secondary dwellings on flag lots are also subject to the standards at EC 9.2775(5)(e).

(b) General Standards for Detached Secondary Dwellings. In addition to the standards in subsection (a) of this section, detached secondary dwellings shall comply with the following, except as provided in subsection (c) below:

1. Building Size. Up to 300 square feet of un-heated garage or storage space attached to the secondary dwelling unit is allowed and is not counted in the allowable total building square footage.
2. Pedestrian Access. A pedestrian walkway shall be provided from the street or alley to the primary entrance of the secondary dwelling. The pedestrian walkway shall be a hard surface (concrete, asphalt or pavers) and shall be a minimum of 3 feet in width.
3. Primary Entrance. The primary entry to a secondary dwelling shall be defined by a covered or roofed entrance with a minimum roof depth and width of no less than 3 feet.
4. Outdoor Storage/Trash. Outdoor storage and garbage areas shall be screened from view from adjacent properties and those across the street or alley with a minimum 42-inch tall 100-percent site obscuring fence or enclosure on at least three sides.
5. Building Height/Interior Setback. Except for secondary dwellings on flag lots (see EC 9.2775), the following standards apply:
   a. Interior yard setbacks shall be at least 5 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line until a point not to exceed a maximum building height of 18 feet.
   b. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in a. above, except that eaves and chimneys are allowed to project into this setback no more than 2 feet. **(See Figure 9.2751(16)(b)3.)**
   c. This standard may be adjusted to allow for a secondary dwelling over an accessory building in accordance with EC 9.8030(34).
6. Maximum Wall Length. Along the vertical face of the dwelling, offsets shall occur at a minimum of every 25 feet by providing at least one of following: recesses or extensions, including entrances, a minimum depth of 2 feet and a minimum width of 5 feet for the full height of the wall. Full height is intended to mean from floor to ceiling (allowing for cantilever floor joists).

(c) Area-Specific Secondary Dwelling Standards. The following standards apply to all new attached or detached secondary dwellings in the R-1 zone within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association:

1. Lot Area. To allow for a secondary dwelling, the lot shall contain at least 7,500 square feet.
2. Lot Dimension. The boundaries of the lot must be sufficient to fully encompass an area with minimum dimensions of 45 feet by

45 feet.

3. Lot Coverage. The lot shall meet the lot coverage requirements for R-1, except that all roofed areas shall be included as part of the calculation of lot coverage.
4. Vehicle Use Area. The maximum area covered by paved and unpaved vehicle use areas including but not limited to driveways, on-site parking and turnarounds, shall be limited to 20 percent of the total lot area.
5. Building Size. For lots at least 7,500 square feet and less than 9,000 square feet in area, the secondary dwelling shall not exceed 600 square feet of total building square footage. For lots at least 9,000 square feet in area, the secondary dwelling shall not exceed 800 square feet of total building square footage. Total building square footage is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.
6. Minimum Attachment. The standards at EC 9.2751(17)(a)4. are applicable.
7. Maximum Bedrooms. For lots with a primary dwelling containing 3 or fewer bedrooms, the secondary dwelling shall be limited to 2 bedrooms. For lots with a primary dwelling containing 4 or more bedrooms, the secondary dwelling shall be limited to 1 bedroom.
8. Maximum Occupancy. For lots with a primary dwelling containing 3 or fewer bedrooms, the secondary dwelling shall be limited to 3 occupants. For lots with a primary dwelling containing 4 or more bedrooms, the secondary dwelling shall be limited to 2 occupants.
9. Building Height/Interior Setback. For detached secondary dwellings:
    a. The interior yard setback shall be at least 5 feet from the interior lot line. In addition, at a point that is 8 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot line until a point not to exceed a maximum building height of 18 feet.
    b. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in 1. above, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.

(See Figure 9.2751(16)(b)3.)

10. Dog Keeping. The standards at EC 9.2751(17)(a)6. are applicable.
11. Ownership/Occupancy Requirements. The standards at EC 9.2751(17)(a)7. are applicable.
12. Temporary Leave. The standards at EC 9.2751(17)(a)8. are applicable.
13. Deed Restriction. The standards at EC 9.2751(17)(a)9. are applicable.
14. Verification. The standards at EC 9.2751(17)(a)10. are applicable.
15. Parking. For the primary dwelling, there shall be a minimum of

one and a maximum of two parking spaces on the lot. There shall be one additional parking space on the lot for the exclusive use for the occupants and guests of the secondary dwelling.

16. Alley Access Parking and Driveway. The standards at EC 9.2751(18)(a)11. are applicable to attached and detached secondary dwellings where primary vehicle access for the required parking is from an alley.
17. Pedestrian Access. The standards at EC 9.2751(17)(b)2. are applicable to attached and detached secondary dwellings, except that if primary vehicle access for the required parking is from an alley, the path must be provided from the alley.
18. Primary Entrance. The standards at EC 9.2751(17)(b)3. are applicable to detached secondary dwellings only.
19. Outdoor Storage/Trash. The standards at EC 9.2751(17)(b)4. are applicable to detached secondary dwellings only.
20. Maximum Wall Length. The standards at EC 9.2751(17)(b)6. are applicable to detached secondary dwellings only.

(d) Adjustment Review. The standards at EC 9.2751(17)(a)8. regarding temporary leave and at EC 9.2751(17)(b)5. regarding building height (to allow for a secondary dwelling over an accessory building) may be adjusted in accordance with EC 9.8030(34). Additionally, an adjustment may be requested to convert an existing building into a secondary dwelling in accordance with EC 9.8030(34) if the existing building does not meet the standards under EC 9.2751(17)(a) or (b). For secondary dwellings, these are the only standards that may be adjusted. With the exception of EC 9.2751(17)(a)8. regarding temporary leave, these standards are not adjustable for secondary dwellings within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association.

(e) Enforcement. Failure to adhere to the standards required under this section shall constitute a violation subject to the enforcement provisions of section 9.0010 through 9.0280 General Administration.

(18) Alley Access Lots in R-1.

(a) General Standards.

1. Applicability. Except as provided in (b) below, the following standards apply to development on alley access lots in R-1.
2. Use Regulations. Alley access lots have the same land use regulations as the base zone except that there is no allowance for a secondary dwelling.
3. Building Size. The total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.
4. Lot Coverage. Alley access lots shall meet the lot coverage requirements for R-1, except that all roofed areas shall be included as part of the calculation of lot coverage.
5. Building Height/Interior Setback.

flexibility for compatible residential development.
(Section 9.3600 added by Ordinance No. 20449, enacted December 14, 2009, effective January 16, 2010.)

9.3605 **S-JW Jefferson Westside Special Area Zone Siting Requirements**. In addition to the approval criteria at EC 9.8865 Zone Change Approval Criteria, to receive the S-JW Jefferson Westside Special Area Zone, the site must be included within the boundaries of the Jefferson Westside Special Area Zone depicted on Figure 9.3605 S-JW Jefferson Westside Special Area Zone boundaries.
(Section 9.3605 added by Ordinance No. 20449, enacted December 14, 2009, effective January 16, 2010.)

9.3615 **S-JW Jefferson Westside Special Area Zone Land Use and Permit Requirements and Special Use Limitations**. The land use and permit requirements and special use limitations applicable in the S-JW Jefferson Westside Special Area Zone shall be those set out at EC 9.2740 and EC 9.2741 for uses in the R-2 zone, except the following uses listed on Table EC 9.2740 are prohibited in the S-JW Jefferson Westside Special Area Zone:

(1) Correctional Facilities.

(2) C-1 Neighborhood Commercial Zone permitted uses, unless such a use is specifically listed in another row on Table 9.2740 as an allowable use under the "R-2" column.

(Section 9.3615 added by Ordinance No. 20449, enacted December 14, 2009, effective January 16, 2010.)

9.3625 **S-JW Jefferson Westside Special Area Zone Development Standards.**

(1) Application of Standards and Adjustment.

(a) Application of Standards. In addition to the special use limitations in EC 9.3615 and the development standards in EC 9.3625 to 9.3640 and EC 9.5000 to 9.5850, the General Standards for All Development in EC 9.6000 through 9.6885 apply within this zone. In the event of a conflict between those general development standards and the development standards in EC 9.3625 to 9.3640, the provisions of EC 9.3625 to 9.3640 shall control.

(b) Adjustment. The development standards in subsections EC 9.3625(6) regarding driveway width and EC 9.3625(3)(a)2.b regarding primary vehicle access may be adjusted in accordance with EC 9.8030(26). For sites zoned S-JW Special Area Zone, these are the only standards that may be adjusted.

(2) Roof Form.

(a) All roof surfaces on residential buildings, other than as provided for porches and dormers in subsections (b) and (c) below, shall have a minimum slope of 6 inches vertically for every 12 inches horizontally, except:

1. A lesser roof pitch is permitted so long as the pitch is no less than the median roof pitch of all residential buildings located on those S-JW lots located within 300 feet of the subject lot. For purposes of determining the median roof pitch, each residential building's roof pitch shall be considered the roof pitch of the building's largest contiguous roof area.

2. For a residential building that contains the only dwelling on a lot, a lesser roof pitch is permitted for up to 1,000 square feet of roof surface, so long as the area(s) of lesser pitch are no more than 15 feet above grade at any point.

(b) Residential building porches are not required to have a sloped roof if the porch is:
1. Less than 100 square feet; or
2. Located on a street-fronting lot that is not an alley access only lot and is on the rear (i.e., side opposite a street) of the residential building closest to the street.

(c) Residential building dormers are not required to have a sloped roof if the dormer is:
1. Less than 10' wide, as measured at sidewalls or maximum roof opening, whichever is greater; or
2. Located on a street-fronting lot that is not an alley access only lot and is on the rear (i.e., side opposite a street) of the residential building closest to the street.

(d) Roof surfaces on garages and other buildings that are not residential buildings in the following categories shall have a minimum slope of 6 inches vertically for every 12 inches horizontally:
1. Buildings with over 200 square feet of floor area; and
2. Buildings with over 100 square feet of floor area that have any part of the building over 12 feet high, as measured from grade.

(3) Alley development standards.

(a) Primary Vehicle Access. For the purposes of this section, "primary vehicle access" means the primary means by which inhabitants take vehicular access to a dwelling or on-site parking space(s) provided for a dwelling. Primary vehicle access is determined as follows:
1. On an alley access only lot, every dwelling's primary vehicle access is the alley.
2. On a lot that is not an alley access only lot and that, consistent with access standards in the EC, could take vehicular access from an alley, a dwelling's primary vehicle access is:
   a. The street, when there is only one dwelling on the lot.
   b. When there are multiple dwellings on the lot, for each on-site parking space that complies with the standards applicable in the S-JW special area zone and that can only be accessed and exited via a street (i.e., cannot use the alley for entry or exit), one dwelling is considered to take primary vehicle access from the street. The remainder of the dwellings shall be considered to take primary vehicle access from the alley.
   If there are one or more dwellings with the alley as primary vehicle access, the dwelling(s) closest to the alley shall be considered to have primary access from the alley. In cases where multiple dwellings are equidistant from the alley and not all of them take primary access from the alley, the property owner may designate which dwellings take primary access from the alley. The provisions in this subsection

(3)(a)2.b. may be adjusted based on the criteria of EC 9.8030(26)(2).

3. On all lots not addressed in 1. or 2., above, all dwellings' primary vehicle access is the street.

(b) No more than one dwelling on the same development site may take primary vehicle access from an alley unless the site also abuts a street that the alley intersects.

(c) On any lot that contains one or more dwellings whose primary vehicle access is an alley, there must be at least an undivided 400 square-foot open space area (not including buildings, parking or driveways) abutting the alley. Except as provided in 4., below, the open space area:
1. shall abut the alley for at least 25% of the length of the lot line abutting the alley;
2. shall be a minimum of 10 feet in depth for the entire extent that the open space area abuts the alley; and
3. may include areas that are within setbacks.
4. The open space required in this subsection (c) may be placed behind parallel parking abutting the alley.

(d) For a dwelling whose primary vehicle access is an alley:
1. The dwelling may not have more than three bedrooms.
2. If the dwelling is in the residential building closest to the alley, then the dwelling shall include a main entrance that is visible from the alley **(see Figure 9.3625(3)(d)2.)** and meets one of the following conditions:
   a. Faces the alley;
   b. Faces the side of the lot and meets all the following conditions:
      (1) The entrance opening is not more than 8 feet from the building façade facing the alley and nearest the alley;
      (2) The entrance includes a covered porch of at least 30 square feet;
      (3) The porch abuts both the façade containing the entrance and a façade facing the alley; or
   c. Faces the side of the lot and meets all the following conditions:
      (1) The entrance opening is no more than 8 feet from the building façade facing the alley and nearest the alley.
      (2) The entrance provides direct resident access to a head-in parking area on the same side of building.
      (3) The entrance includes a covered porch of at least 20 square feet.
      (4) The façade facing the alley includes windows that total at least 8 feet wide when measured at 5' above the floor of the first story and that have a minimum area of at least 20 square feet.
3. One on-site parking space, accessible from the alley, per dwelling is required.

(4) Main Entrances.

(a) Except as provided in (c), below, on a street-fronting lot that is not an alley access only lot, the residential building closest to the street shall include a main entrance that meets one of the following conditions:
1. Faces the street; or
2. Faces the side of the lot and meets all the following conditions:
a. The main entrance opening is not more than 8 feet from the building façade facing the street and nearest the street;
b. The main entrance includes a covered porch of at least 30 square feet;
c. The porch abuts both the façade containing the main entrance and a façade facing the street.

(b) Except as provided in (c), below, on corner lots with more than one residential building, all residential buildings shall include a main entrance that meets the requirements of subsection (a).

(c) Notwithstanding (a) and (b), above, where three or more dwellings have ground-level entrances on two or more sides of a common courtyard that is open to a street for at least 20 feet, the dwellings' main entrances may face the courtyard. **(See Figure 9.3625(4)(c))**

(5) Garage Door Standards.

(a) Except for a garage accessed from an alley, only one garage door, with maximum width of 9 feet and maximum height of 8 feet, is allowed within 30 feet of any portion of a lot line that abuts a street.

(b) For a garage accessed from an alley, one garage door 18 feet wide and 8 feet high or 2 garage doors 9 feet wide and 8 feet high, are permitted.

(6) Driveway Standards. In lieu of any conflicting standards in EC 7.410 Driveways – Curb cut, the following standards shall apply:

(a) Street Access Driveway Curb Cuts and Width. Driveways that are accessed from a street must meet all the following requirements:
1. Except as provided in (7), below, a lot shall have no more than one curb cut on each street that the lot abuts.
2. The maximum curb cut width is limited to 14 feet where the driveway abuts the street, and the driveway must taper to no more than 12 feet within 3 feet of the street curb or edge.
3. The maximum driveway width for a driveway that accesses a single-car garage is 12 feet.
4. No portion of a driveway or parking area shall be wider than 12 feet within 30 feet of any portion of a lot line that abuts a street.
5. For a driveway or parking area located within five feet of an existing driveway or parking area on an adjacent property under common ownership or within the same development site, the maximum total width of the two driveways and/or parking areas is 18 feet within 30 feet of any portion of a lot line that abuts a street.
6. The full width of impermeable surfaces and surfaces with permeable paved surfaces (such as parking areas or walkways) that are within one foot of a driveway shall be included in calculating the driveway width except that one private walkway, no wider than 4 feet within 5 feet of the driveway, may terminate at the driveway. **(See Figure 9.3625(6)(a)6.)**
7. Exception. For a duplex where both main entrances face the same street and the lot is not on the corner of two streets or the corner

of a street and an alley, two curb cuts and driveways are allowed as long as both curb cuts and driveways meet all of the following conditions:

a. There must be at least 30 feet between the two curb cuts;
b. Each curb cut must be at least 5 feet from any curb cut on an adjacent lot;
c. The maximum curb cut width is limited to 11 feet where the driveway abuts the street, and the driveway must taper to no more than 9 feet within 3 feet of the street curb or edge; and
d. No portion of a driveway or parking area shall be wider than 9 feet within 30 feet of any portion of a lot line that abuts a street.

(See Figure 9.3625(6)(a)7.).

(b) Alley-Access Driveway Width. The maximum driveway and/or parking area width is 18 feet within 30 feet of any portion of a lot line that abuts the alley.

(c) Adjustment. The driveway width standards in this subsection (6) may be adjusted based on the criteria of EC 9.8030(26)(1).

(7) Parking Standards.

(a) Except as provided in (3)(d)3. above, each dwelling shall have one on-street or on-site vehicle parking space for every three bedrooms, rounded up to the next whole number (i.e. a four-bedroom dwelling must have at least two parking spaces). For purposes of this subsection, each uninterrupted twenty feet of lot line that abuts a street right-of-away where parking is legal within the entirety of that twenty feet shall count as one on-street parking space. The twenty feet may not include any portion of a curb cut.

(b) No portion of a vehicle parking area may be located in the area defined by the Street Setback minimum standard (i.e., from which structures, other than permitted intrusions, are excluded) or between the street and the residential building façade that faces, and is closest to, the street. **(See Figure 9.3625(7)(b))**.

(8) The following Table 9.3625 sets forth the S-JW Special Area Zone development standards, subject to the special development standards in EC 9.3626.

Table 9.3625 S-JW Jefferson Westside Special Area Zone Development Standards (See EC 9.3626 Special Development Standards for Table 9.3625.)	
Density(1)	
Minimum Dwellings Per Lot	
Lots less than 13,500 Square Feet	--
Lots 13,500 square feet and larger	1 dwelling per lot for every 6,750 square feet (fractional values are rounded down to the nearest whole number)
Maximum Dwellings Per Lot(1)	
Alley Access Only Lot	1 dwelling per lot
Lots less than 2,250 square feet	No additional dwellings after December 14, 2009
Lots between 2,250 and 4,499 square feet	1 dwelling per lot
Lots between 4,500 and 8,999 square feet	2 dwellings per lot

Table 9.3625 S-JW Jefferson Westside Special Area Zone Development Standards (See EC 9.3626 Special Development Standards for Table 9.3625.)	
Lots 9,000 square feet and larger	1 dwelling per lot for every 4,500 square feet (fractional values are rounded down to the nearest whole number)
Maximum Building Height (2) (9)	
Minimum Building Setbacks (3) (4) (5) (9)	
Maximum Lot Coverage (6) (7)	**50%**
Maximum Vehicle Use Area (6)	**20%**
Common and Private Open Space (7)	
Fences (8)	
(Maximum Height Within Interior Yard Setbacks)	6 feet
(Maximum Height within Front Yard Setbacks)	42 inches

(Section 9.3625 added by Ordinance No. 20449, enacted December 14, 2009, effective January 16, 2010.)

9.3626 Special Development Standards for Table 9.3625.

(1) Density. For purposes of determining the maximum allowable dwellings on a lot:

(a) A dwelling with five or fewer bedrooms that is the only dwelling on a street-abutting lot that is at least 4,500 square feet shall be counted as one dwelling.

(b) Two dwellings that together have a total of six or fewer bedrooms, and that are the only dwellings located on a street-fronting lot that is at least 4,500 square feet, and where at least one residential building on the lot has a front facade that faces a street and is within the street maximum setback, shall be counted as two dwellings.

(c) For cases not covered by sections (a) and (b), above, the dwelling count shall be the sum of the dwelling counts calculated under the following subsections:

1. The total dwelling count for all dwellings with three or fewer bedrooms shall be the number of dwellings,
2. The total dwelling count for all dwellings with four or more bedrooms shall be the total number of bedrooms in these dwellings divided by three. Fractional dwelling counts resulting from this calculation shall be rounded up to the next whole number, e.g. a total of seven bedrooms counts as three dwellings.

(d) Dwelling counts shall be recalculated as part of the City's consideration of any new development proposing to increase the number of dwellings or bedrooms on a lot. The proposed change shall not be permitted unless the new dwelling count will comply with all applicable standards in this section.

(e) In addition to the Maximum Dwellings Per Lot allowed by Table 9.3625, one additional dwelling may be established on a lot that is between 9,000 square feet and 12,499 square feet, and up to two additional dwellings may be established on a lot that is 13,500 square feet or larger, so long as:

1. No residential building on the lot has more than two dwellings;
2. No dwelling on the lot has more than three bedrooms; and

3. No dwelling added to the lot after December 14, 2009, or that is on a lot that has more than the number of dwellings allowed on the lot by Table 9.3625 has more than 800 square feet of living area or any point (other than chimney) higher than 18 feet.

(f) Multi-lot developments. A multi-lot development site is treated as one area for calculating allowable dwellings. (I.e., allowable dwellings are not the sum of individual lots' allowable dwellings). A multi-lot development site cannot include an alley access only lot or a lot less than 4,500 square feet.

(2) Building Height. (See Figure 9.3626(2)(3)(4)).

(a) Residential buildings.

1. On a street-fronting lot that is not an alley access only lot, the maximum height of any part of a residential building within 60 feet of the lot line abutting the street is:
   a. For any section of a roof that has at least a 6:12 pitch (i.e. a slope of 6 inches vertically for every 12 inches horizontally) for the entire roof section: 30 feet.
   b. Otherwise: 18 feet.
   c. For a lot that meets the definition of "Street-fronting lot" with respect to more than one street, the 60 foot distance shall be measured from the shortest lot line that meets the requirements under the definition of "Street-fronting lot."
2. The maximum height of any part of a residential building not covered under subsection 1., above, is 18 feet.
3. Chimneys on residential buildings may exceed the maximum height limits by no more than 5 feet.

(See Figure 9.3626(2)(a)).

(b) The maximum height of any part of a garage or building that is not a-residential building is 15 feet.

(c) The height of any part of a structure shall be measured as its vertical distance above grade.

(3) Alley and Street Setbacks. (See Figure 9.3626(2)(3)(4)).

(a) Alley minimum setback. Except as provided under subsection (a)1., below, all buildings shall be set back a minimum of the distance specified in subsections 1. and 2., below, from any portion of a lot line that abuts an alley and from any alley right-of-way easement, whichever would result in a greater setback distance.

1. Residential buildings: 5 feet. All intrusions allowed by EC 9.6745 ("Setbacks-Intrusions Permitted") and not explicitly prohibited by other provisions applicable in the S-JW Special Area Zone are allowed but no intrusion may penetrate more than two feet into the setback.
2. Other structures: 2 feet. No intrusions are allowed.

(b) Street setback.

1. Residential buildings.
   a. Minimum setback shall be:
      (1) 15 feet from any portion of a lot line that abuts a street and from any street right-of-way easement, whichever would result in a greater setback distance; or

(2) The average setback distance to the widest portion of the front facades of the two nearest residential buildings, one on each adjacent property on the side of the subject property, that face the same street, but not less than 10 feet; or

(3) Where there are not two dwellings as described in (2), above, one half the sum of 15 feet plus the setback distance to the widest portion of the front facade of the nearest residential building on a different property that faces the same street, but not less than 10 feet

(4) All intrusions allowed by EC 9.6745 ("Setbacks-Intrusions Permitted") and not explicitly prohibited by other provisions applicable in the S-JW Special Area Zone are allowed. No intrusion may penetrate closer than 10 feet from any portion of a lot line that abuts a street and from any street right-of-way easement.

b. Maximum setback on a street-fronting lot that is not an alley access only lot:

(1) At least one residential building on the lot must have at least 25 feet or 100 per cent, whichever is less, of its main facade width located within 30 feet of the portion(s) of a lot line that abuts the street or the easement that the main facade faces.

(2) The maximum front yard setback can be increased to one of the following measurements, but to no more than 35 feet:

(A) The average setback distance to the widest portion of the front facades of the two nearest residential buildings, one on each adjacent property on the side of the subject property, that face the same street; or

(B) Where there are not two such dwellings as described in (A), one half the sum of 30 feet plus the setback distance to the widest portion of the front facade of the nearest residential building on a different property that faces the same street.

(3) On a corner lot (i.e., a lot that has abuts two intersecting streets), the street minimum setback requirement may be reduced to 10 feet for no more than a 30-foot extent of one residential building on one of the streets, when that residential building meets the following conditions:

(A) The residential building has a main entrance that meets the requirements in EC 9.3625(4) with respect to a different street and complies with the 15 foot minimum street setback requirement with respect to that street; and

(B) No dwelling in the residential building has a main entrance within the extent of the façade to which the 10 foot setback applies.

2. Garages and buildings that are not residential buildings shall meet the following minimum setback requirements:
   a. 21 feet from any portion of a lot line that abuts a street and from any street right-of-way; and
   b. On all lots except alley access only lots: 6 feet behind the street-facing façade, other than the façade of an attached garage, that is furthest from the street of the residential building closest to the street that the garage or non-residential building faces.

(c) Special setback provisions may also apply, see EC 9.6750 Special Setback Standards.

(4) Interior Yard Setbacks. (See Figure 9.3626(2)(3)(4)). For purposes of this subsection, "generally parallel" shall mean within 30 degrees of parallel, and the term "generally perpendicular" shall mean within 30 degrees of perpendicular. Except as provided in subsections (c) through (f) of this subsection:

(a) For a street-fronting lot that is not an alley access only lot, for any portion of an interior lot line that is located within 60 feet of a lot line abutting a street and generally perpendicular to the side of the lot along which the interior lot line lies: The setback shall be at least 5 feet from the interior lot line and a minimum of 10 feet from structures on other lots. In addition, at a point that is 12 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 50 degrees from vertical) away from the lot line. **(See Figure 9.3626(4)(a)(b)).**

(b) Setbacks from all other portions of interior lot lines, not covered in subsection (a), shall be at least 5 feet from the interior lot line and a minimum of 10 feet from structures on other lots. In addition, at a point that is 8 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 50 degrees from vertical) away from the lot line. **(See Figure 9.3626(4)(a)(b)).**

(c) All intrusions allowed by EC 9.6745 ("Setbacks-Intrusions Permitted") and not explicitly prohibited by other provisions applicable in the S-JW Special Area Zone are allowed, except that:
   1. The maximum extent of allowable intrusions into the sloped portion of a setback shall be measured horizontally from the sloped plane of the setback.
   2. No wall or surface of a building that is an intrusion allowed under EC 9.6745(2) and that is over 20 square feet shall be closer than 10 feet to any residential building's wall or surface that is over 20 square feet on an adjacent property.

(d) On a street-fronting lot that is not an alley access only lot, a residential building with a main roof that is gabled or hipped and has a ridgeline generally parallel to a lot line abutting the street may have a single gable or hipped portion on each side of the building intrude into the sloped portion of the interior yard setback, as long as the entire intrusion is within 60 feet of the respective lot line abutting the street and the maximum width of the part of the building that penetrates the sloped setback is 35 feet.

(e) A residential building may have a maximum of 4 dormers, with a maximum of 2 dormers per side of the roof, that intrude into the sloped portion of an interior yard setback, as long as each dormer that intrudes on the setback meets all the following requirements:
1. Has at least 4 square feet of window(s) in the end (face) wall.
2. Has a minimum setback of 7 feet from interior lot lines and is a minimum of 10 feet from structures on other lots.
3. Maximum width.
   a. There is no maximum width for a dormer that has an end (face) wall that does not face a street and is setback at least 30 feet from the nearest lot line segment the end wall faces.
   b. The maximum width for all other dormers that intrude into the setback is 10 feet measured between the sidewalls or maximum roof opening, whichever is greater.
4. The dormer's sidewalls (if any) are setback a minimum of 2 feet from the nearest generally parallel outer wall of the building to which the dormer is attached.

(f) Exceptions.
1. Structures may intrude into the sloped portion of any interior yard setback as long as the lot owner secures and records in the office of the Lane County Recorder a maintenance access easement adjacent to intrusive side of the structure. The easement shall provide a 5-foot wide access the entire length of the intrusion and 5 feet beyond both ends, and require a 10-foot separation between buildings on separate lots. The easement shall be on a form provided by the city, shall be approved by city staff, and be subject to review and payment of a fee set by the city manager.
2. Structures may intrude into an interior yard setback arising from a lot line between an alley access only lot and the lot between the alley access only lot and the street, as long as the property owner secures and records a maintenance access easement as described in 1, above.

(g) Easements. Except where buildings abut or share a common wall, the owner of a lot or parcel with an interior yard of less than 5 feet from the adjacent property line must secure and record in the office of the Lane County Recorder a maintenance access easement adjacent to that side of the building. The easement shall provide a 5-foot wide access the entire length of the building and 5 feet beyond both ends, and require a 10-foot separation between buildings on separate lots. The easement shall be on a form provided by the city, shall be approved by city staff, and be subject to a review and payment of a fee set by the city manager. There shall be no projection of building features into this easement.

(5) Window Setback above First Floor. For purposes of this subsection, "generally parallel" shall mean within 30 degrees of parallel.

(a) Except as provided in (b), windows above the first floor shall be setback a minimum of 10 feet from interior lot lines.

(b) Windows that are within 60 feet of a lot line abutting the street of a street-fronting lot that is not an alley access only lot, and that are in a gable or hipped end of a residential building with a main roof ridgeline

generally parallel to the respective lot line abutting the street, are excluded from the setback requirement in (a), above.

(6) The maximum area covered by paved and unpaved vehicle use areas including but not limited to driveways, on-site parking and turnarounds, is 20 percent of the total development site area.

(7) **Common and Private Open Space. (See Figure 9.3626(7)).**

(a) All developments of three or more dwellings (as calculated under EC 9.3626(1) shall include common or private open space, or a combination thereof, that equals or exceeds the greater of the following two areas:
1. 20% of the development site area.
2. 25% of total living area.

(b) Any common open space intended to meet the requirements of this subsection (7) may include only those the areas listed under EC 9.5500(9)(a)1.a. and b. No indoor area may be counted as common open space.
1. The minimum area for any common open space shall be 250 square feet.
2. The boundaries of any area counted as common open space must be sufficient to encompass a square with 15 foot sides.

(c) Any private open space intended to meet the requirements of this subsection (7) shall be consistent with EC 9.5500(9)(b).

(d) An open space credit shall be allowed consistent with EC 9.5500(9)(a)2.e. for qualifying setback areas with minimum dimensions of 15 feet by 15 feet. The EC 9.5500(9)(c) credit for public parks is not allowed.

(8) **Fences.**

(a) Types. The type of fence (including walls or screens) used is subject to specific requirements stated in the landscape standards beginning at EC 9.6200 Purpose of Landscape Standards. The standards apply to walls, fences, and screens of all types including open, solid, wood, metal, wire, masonry or other material. Use of barbed wire and electric fencing is regulated in EC 6.010(d) Fences.

(b) Location and Heights.
1. Fences up to 42 inches in height are permitted within the required front yard setback. For corner lots or double frontage lots, a fence between 42 inches and 6 feet in height is permitted within one of the two front yard setbacks, so long as for corner lots, this fence cannot extend past a line created by an extension of the front wall of the dwelling. **(See Figure 9.2751(14)(b)1.)**
2. Fences up to 6 feet in height are permitted within the required interior yard setback.
3. The height of fences that are not located within the required setback areas is the same as the regular height limits of the zone.
4. Fences must meet the standards in EC 9.6780 Vision Clearance Area.

(9) Maximum building height and minimum building setbacks may be modified with an approved planned unit development permit. (For planned unit development procedures refer to EC 9.7300 General Overview of Type III Application Procedures and for approval criteria refer to EC 9.8320 Tentative Planned Unit Development Approval Criteria - General.

(Section 9.3626 added by Ordinance No. 20449, enacted December 14, 2009, effective January 16, 2010; amended by Ordinance No. 20492, enacted May 14, 2012, effective June 15, 2012.)

9.3630 S-JW Jefferson Westside Special Area Zone Lot Standards. The following Table 9.3630 sets forth S-JW Jefferson Westside Special Area Zone lot standards, subject to the special standards in EC 9.3631.

Table 9.3630 S-JW Jefferson Westside Special Area Zone Lot Standards (See EC 9.3631 Special Standards for Table 9.3630.)	
Lot Area Minimum (1)	
Lots, except Small Lots, Alley Access Only Lots	4,500 square feet
Small Lots (2)	2,250 square feet or per Cluster Subdivision or PUD
Alley Access Only Lots (4)	2,250 square feet
Frontage Minimum (1)	
Interior Lot	45 feet
Corner Lot	45 feet
Lot Area Maximum (3)	13,500 square feet

(Section 9.3630 added by Ordinance No. 20449, enacted December 14, 2009, effective January 16, 2010.)

9.3631 Special Standards for Table 9.3630.

(1) (a) Lot frontage requirements may be met by a lot that abuts a street or an alley continuously for the required length indicated in Table 9.3630.

(b) A lot must be of sufficient size and/or have sufficient on-street parking to meet applicable vehicle parking requirements under EC 9.3625(3)(b)4 or EC 9.3625(7) for one dwelling, or all existing dwellings on the lot at the time the lot is created, whichever is greater.

(c) Rectilinear shape. A lot line segment is a portion of the boundary line of a lot that is bounded on each end by an angle and that contains no angles within the line segment. (The point at which a straight line intersects a curved line is considered an angle.)

1. All lot line segments must be straight lines and intersect at right angles (90 degrees).
2. Exceptions
   a. Lot line segments may intersect at an angle between 85 and 95 degrees to the extent that will produce a lot with at least four sides and a lot boundary with fewer angles than could be accomplished using only right angles.
   b. An angle between 45 and 135 degrees is allowed where a new lot line intersects a lot line segment that existed prior to December 14, 2009, and the existing lot line segment did not intersect both its adjoining lot line segments at right angles.

(d) A lot's boundaries must be sufficient to fully encompass a rectangle of the following size:

1. Alley access only lots: 45'x35'
2. Other lots: 45'x45'

(See Figure 9.3631(1)(d)(e)).

(e) Minimum interior lot dimension. **(See Figure 9.3631(1)(d)(e))**. The minimum distance between any two non-intersecting lot line segments is

35 feet when measured by a straight line that does not begin or end at an intersection of any two lot line segments and that lies entirely within the lot's boundaries.

(f) The Property Line Adjustment provisions at EC 9.8400 through 9.8420 are available within the S-JW zone only for adjustment of a portion of a lot line that existed in its current location as of December 14, 2009. Such lot lines may be adjusted by up to 5 feet, measured perpendicularly from the lot line's current location, and consistent with all other applicable lot standards. A Property Line Adjustment allowed under this section may be up to 10 feet if the adjustment is necessary to accommodate an encroachment that existed as of December 14, 2009,.

(g) A lot must have the capacity for vehicular access from an alley or street consistent with access standards in the EC.

(h) The creation of a new flag lot is prohibited in the S-JW Jefferson Westside Special Area Zone.

(2) Other than an alley access only lot, a lot with an area of less than 4500 square feet:

(a) May be created only if:

1. The original lot from which the small lot is created abutted a street for at least a continuous 45 feet and was at least 6,750 square feet prior to the creation of the small lot; and
2. Shall not have an existing dwelling that has more than three bedrooms.
3. Only one "small lot" may be created from any portion of a lot that exists as of December 14, 2009.

(b) No new dwelling with more than three bedrooms is allowed on a small lot.

(3) Exceptions to the maximum lot size shall be granted if any of the following is met:

(a) Existing physical circumstances such as topographically constrained lands, conservation easements, existing buildings, or utility easements prevent the ability to further divide the lot.

(b) The lot exceeding the maximum lot size is intended to reserve a large lot for future land division with feasibility demonstrated by a conceptual buildout plan.

(c) The subdivision achieves a minimum density of 9 units per net acre.

(d) The exception will enable protection of natural resources.

(4) An alley access only lot may be created only if:

(a) The original lot from which the alley access only lot is created abuts a street for at least a continuous 45 feet and is at least 6,750 square feet prior to the creation of the alley access only lot;

(b) Only one alley access only lot may be created from any portion of a lot that exists as of December 14, 2009; and

(c) A new alley access only lot must include the entire portion of the original lot's lot line that abuts the alley.

(Section 9.3631 added by Ordinance No. 20449, enacted December 14, 2009, effective January 16, 2010.)

Intervenor-Petitioner Housing Land Advocates'
Petition for Review

Appendix E

Joint Statement of the Department of Housing and Urban Development and the Department of Justice: State and Local Land Use Laws and Practices and the Application of the Fair Housing Act

LUBA Nos. 2018-063 and -064

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Washington, D.C.
November 10, 2016

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT

INTRODUCTION

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the Federal Fair Housing Act ("the Act"),[1] which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.[2] The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act's requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ's and HUD's Joint

[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

[2] The Act uses the term "handicap" instead of "disability." Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of "disability" in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act's requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD's and DOJ's enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act ("ADA"),[3] Section 504 of the Rehabilitation Act of 1973 ("Section 504"),[4] and Title VI of the Civil Rights Act of 1964.[5] In addition, the Joint Statement does not address a state or local government's duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning

1. How does the Fair Housing Act apply to state and local land use and zoning?

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. §12132.

[4] 29 U.S.C. § 794.

[5] 42 U.S.C. § 2000d.

2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the "impact" of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the "historical background" of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the "specific sequence of events," such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the "normal procedural sequence," such as whether a municipality deviated from normal application or zoning requirements; (5) "substantive departures," such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the "legislative or administrative history," such as any statements by members of the state or local decision-making body.[6]

4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[7] The Court stated that "[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification."[8]

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[6] *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).
[7] ___ U.S. ___, 135 S. Ct. 2507 (2015).
[8] *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the "housing for older persons" exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

Questions and Answers on the Fair Housing Act and Local Land Use and Zoning Regulation of Group Homes

7. Who qualifies as a person with a disability under the Fair Housing Act?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term "major life activity" includes activities such as seeing, hearing, walking breathing, performing manual tasks, caring for one's self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

9. In what ways does the Fair Housing Act apply to group homes?

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

10. What is a reasonable accommodation under the Fair Housing Act?

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

11. Does the Fair Housing Act protect persons with disabilities who pose a "direct threat" to others?

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a "direct threat" to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual's recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual's tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.[9]

14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?

In *Olmstead v. L.C.*,[10] the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

[9] Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

[10] 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?

A "spacing" or "dispersal" requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction's intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction's stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors' stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

Questions and Answers on the Fair Housing Act and Reasonable Accommodation Requests to Local Zoning and Land Use Laws

20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

22. What is the procedure for requesting a reasonable accommodation?

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

24. What if a local government fails to act promptly on a reasonable accommodation request?

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

Questions and Answers on Fair Housing Act Enforcement of Complaints Involving Land Use and Zoning

26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

27. How can I find more information?

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

For more information on state and local governments' obligations under Section 504:

- HUD website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, www.ADA.gov, or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* http://www.ada.gov./olmstead/q&a_olmstead.htm.
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* http://www.hud.gov/offices/fheo/images/fhpg.pdf.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf.

Intervenor-Petitioner Housing Land Advocates' Petition for Review

Appendix F

Ordinances 20595 and 20594

LUBA Nos. 2018-063 and -064

COUNCIL ORDINANCE NO. 20595

COUNCIL BILL 5185

AN ORDINANCE CONCERNING SECONDARY/ACCESSORY DWELLINGS AND AMENDING SECTION 9.0500 OF THE EUGENE CODE, 1971.

ADOPTED: June 11, 2018

SIGNED: June 13, 2018

PASSED: 7:0

REJECTED:

OPPOSED:

ABSENT: Clark

EFFECTIVE: July 1, 2018

ORDINANCE NO. 20595

AN ORDINANCE CONCERNING SECONDARY / ACCESSORY DWELLINGS AND AMENDING SECTION 9.0500 OF THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The definition of "Dwelling, Secondary" in Section 9.0500 of the Eugene Code, 1971, is amended to provide as follows:

9.0500 Definitions. As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

Dwelling, Accessory. An interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

Section 2. The findings set forth in Exhibit A attached to this Ordinance are adopted as findings in support of this Ordinance.

Section 3. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Section 4. Pursuant to the provisions of Section 32(2) of the Eugene Charter of 2002, with the affirmative vote of two-thirds of the members of the City Council, this Ordinance shall become effective on July 1, 2018. An effective date of less than 30 days is necessary to conform to State Law. If a lesser majority votes affirmatively, the effective date shall be as provided at Section 32(1) of the Eugene Charter of 2002.

Passed by the City Council this
11th day of June, 2018

Deputy City Recorder

Approved by the Mayor this
13 day of June, 2018

Mayor

Exhibit A

Findings

Secondary (Accessory) Dwellings (Phase 1 Implementation of Senate Bill 1051) (City File CA 18-1)

Overview
The goal of this proposed land use code amendment is to align the definition of accessory dwelling with the definition provided in Senate Bill 1051 (now codified at ORS 197.312(5)(b)).

Findings
Eugene Code Section 9.8065 requires that the following approval criteria (in ***bold italics***) be applied to a land use code amendment:

(1) The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.

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.

The City has acknowledged provisions for community involvement which insure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The land use code amendment does not amend the citizen involvement program. The process for adopting this amendment complied with Goal 1 because it is consistent with the City's acknowledged citizen involvement provisions.

A Notice of Proposed Amendment was filed with the Oregon Department of Land Conservation and Development on January 30, 2018. A public hearing was held by the Planning Commission on March 6, 2018. On March 26, 2018, the Planning Commission recommended that the City Council approve the proposed change to the definition of "accessory dwelling." On March 27, 2018, a Revised Notice of Proposed Amendment was filed with the Oregon Department of Land Conservation and Development, incorporating the Planning Commission's recommended amendments. A public hearing before the City Council was held April 16, 2018. Consistent with land use code requirements, the Planning Commission public hearing on the proposal was duly noticed to all neighborhood organizations in Eugene, as well as community groups and individuals who requested notice. In addition, notice of the public hearing was published in the Register Guard. Information concerning the proposed amendment, including the dates of the public hearings, were posted on the City of Eugene website.

These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the ordinance is consistent with Statewide Planning Goal 1.

Goal 2 - Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such

decisions and actions.

Eugene's land use code specifies the procedure and criteria that were used in considering this amendment. The record shows that there is an adequate factual basis for the amendment. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens.

To comply with the Goal 2 coordination requirement, the City engaged in an exchange about the subject of this amendment with all of the affected governmental units. Specifically, the City provided notice of the proposed action and opportunity to comment to the Oregon Department of Land Conservation and Development, as well as to Lane County and the City of Springfield. There are no exceptions to Statewide Planning Goal 2 required for this amendment. Therefore, the amendment is consistent with Statewide Planning Goal 2.

Goal 3 - Agricultural Lands. To preserve agricultural lands.

The amendment is for property located within the urban growth boundary and do not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

Goal 4 - Forest Lands. To conserve forest lands.

The amendment is for property located within the urban growth boundary and do not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. To conserve open space and protect natural and scenic resources.

OAR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

These amendment does not create or amend the City's list of Goal 5 resources, do not amend a code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, do not allow new uses that could be conflicting uses with a significant Goal 5 resource site and do not amend the acknowledged urban growth boundary. Therefore, Statewide Planning Goal 5 does not apply.

Goal 6 - Air, Water and land Resource Quality. To maintain and improve the quality of the air, water

and land resources of the state.

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The amendment does not affect the City's ability to provide for clean air, water or land resources. Therefore, Statewide Planning Goal 6 does not apply.

Goal 7 - Areas Subject to Natural Disasters and Hazards. To protect life and property from natural disasters and hazards.

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, landslides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The amendment does not affect the City's restrictions on development in areas subject to natural disasters and hazards. Further, the amendment does not allow for new development that could result in a natural hazard. Therefore, Statewide Planning Goal 7 does not apply.

Goal 8 - Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The amendment does not affect the City's provisions for or access to recreation areas, facilities or recreational opportunities. Therefore, Statewide Planning Goal 8 does not apply.

Goal 9 - Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The amendment does not impact the supply of industrial or commercial lands. Therefore, the amendment is consistent with Statewide Planning Goal 9.

Goal 10 - Housing. To provide for the housing needs of citizens of the state.

Goal 10 requires communities to provide an adequate supply of residential buildable land to accommodate estimated housing needs for a 20-year planning period. The Residential Lands Supply Study (2017) was adopted by the City of Eugene as a refinement of the Envision Eugene Comprehensive Plan, and complies with the requirements of Goal 10 and the corresponding Administrative Rule. According to the Residential Lands Supply Study, there is sufficient buildable residential land to meet the identified land need.

The amendment does not impact the supply of residential buildable land. No land is being re-designated from residential use to a nonresidential use, and the amendment does not otherwise diminish the amount of lands available for residential use.

Exhibit A

Accordingly, the amendment does not impact the supply or availability of residential lands included in the documented supply of "buildable land" that is available for residential development as inventoried in the acknowledged Residential Lands Supply Study. Therefore, the amendment is consistent with Statewide Planning Goal 10.

Goal 11- Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The amendment does not affect the City's provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

Goal 12- Transportation. To provide and encourage a safe, convenient and economic transportation system.

The Transportation Planning Rule (OAR 660-012-0060) contains the following requirement:

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The amendment does not change the functional classification of a transportation facility, change the standards implementing a functional classification system or degrade the performance of a facility otherwise projected to not meet performance standards. As such, the amendment does not have a significant effect under (a), (b) or (c). Therefore, the amendment does not significantly affect any

existing or future transportation facilities. Based on the above findings, the amendment is consistent with Statewide Planning Goal 12.

Goal 13 - Energy Conservation. To conserve energy.

The amendment does not impact energy conservation. Therefore, Statewide Planning Goal 13 does not apply.

Goal 14 - Urbanization. To provide for an orderly and efficient transition from rural to urban land use.

The amendment does not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

Goal 15 - Willamette River Greenway. To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The amendment does not contain any changes that affect the Willamette River Greenway regulations, therefore, Statewide Planning Goal 15 does not apply.

Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

There are no coastal, ocean, estuarine, or beach and dune resources related to the property affected by this amendment. Therefore, these goals are not relevant and the amendment will not affect compliance with Statewide Planning Goals 16 through 19.

(2) The amendment is consistent with applicable provisions of the comprehensive plan and applicable adopted refinement plans.

Metro Plan
The Metro Plan does not contain any policies relevant to this amendment.

Envision Eugene Comprehensive Plan
The Envision Eugene Comprehensive Plan does not contain any policies relevant to this amendment.

Applicable Refinement Plans
Given the broad applicability of this amendment, all adopted refinement plans were reviewed for consistency. No relevant policies were found in the adopted refinement plans.

Based on the above finding, this criterion is met.

(3) The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.

The amendment does not establish a special area zone. Therefore, this criterion does not apply.

COUNCIL ORDINANCE NO. 20594

COUNCIL BILL 5184

AN ORDINANCE CONCERNING SECONDARY/ACCESSORY DWELLINGS AND AMENDING SECTIONS 4.330, 7.010, 9.0500, 9.1245, 9.2010, 9.2011, 9.2740, 9.2741, 9.2750, 9.2751, 9.2775, 9.3060, 9.3065, 9.3115, 9.3125, 9.3210, 9.3215, 9.3510, 9.3615, 9.3810, 9.3811, 9.3815, 9.3910, 9.3915, 9.6105, 9.6410, 9.6420, 9.6776, 9.6885 AND 9.8030 OF THE EUGENE CODE, 1971.

ADOPTED: June 11, 2018

SIGNED: June 13, 2018

PASSED: 7:0

REJECTED:

OPPOSED:

ABSENT: Clark

EFFECTIVE: July 1, 2018

ORDINANCE NO. 20594

AN ORDINANCE CONCERNING SECONDARY / ACCESSORY DWELLINGS AND AMENDING SECTIONS 4.330, 7.010, 9.0500, 9.1245, 9.2010, 9.2011, 9.2740, 9.2741, 9.2750, 9.2751, 9.2775, 9.3060, 9.3065, 9.3115, 9.3125, 9.3210, 9.3215, 9.3510, 9.3615, 9.3810, 9.3811, 9.3815, 9.3910, 9.3915, 9.6105, 9.6410, 9.6420, 9.6745, 9.6775, 9.6885 AND 9.8030 OF THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The term "secondary dwelling" is replaced with "accessory dwelling" (including grammatical revisions for plural and a/an agreement) throughout the Eugene Code, 1971, and including the following Sections of that Code: 4.330 (definition of "Noncommercial dog kennel); 7.010 (definition of "Duplex"); 9.0500 (definitions of "Dwelling, Duplex," "Dwelling, Secondary," "Dwelling, One-Family" and "Kennel"); Table 9.1245; Table 9.2740; 9.2741(2); Table 9.2750; 9.2751(1); 9.2751(3); 9.2751(17); 9.2751(18); 9.2775(1); 9.2775(4); 9.2775(5); 9.3065(2); Table 9.3125(3)(g); Table 9.3210; Table 9.3810; 9.3811(1); Table 9.3815(3)(n); Table 9.3910; Table 9.6105(5); Table 9.6410; 9.6420(3); 9.6745(7); 9.6775(1); 9.6885(1); and 9.8030(34). To the extent this change in terminology occurs in code sections that are further amended, below, the changes made by this Section 1 are also shown below.

Section 2. The definition of "Accessory Building" in Section 9.0500 of the Eugene Code, 1971, is amended to provide as follows:

9.0500 **Definitions**. As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

Accessory Building. Any authorized, detached building subordinate to the main building on the same development site. In addition, for the purposes of EC 9.2700 through 9.2751, in the R-1 zone, an accessory building that shares a common wall with the primary dwelling for less than 8 feet is considered a detached accessory building. An accessory dwelling is not an accessory building.

Section 3. The "Dwellings" subsection in the "Residential" section in Table 9.2010 of Section 9.2010 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.2010 Agricultural Zone Uses and Permit Requirements	
	AG
Residential	
Dwellings	
One-Family Dwelling, 1 Per Lot	P
Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot)	P(2)

Section 4. Section 9.2011 of the Eugene Code, 1971, is amended to provide as follows:

9.2011 Special Use Limitations for Table 9.2010.

(1) Permitted in the AG zone, subject to the PRO zone standards in EC 9.2640.

(2) Permitted in the AG zone, subject to the standards for accessory dwellings at EC 9.2751(17).

Section 5. The following entries under the "Residential" section in Table 9.2740 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.2740 Residential Zone Land Uses and Permit Requirements

	R-1	R-1.5	R-2	R-3	R-4
Residential					
Dwellings. (All dwellings, including accessory dwellings, shall meet minimum and maximum density requirements in accordance with Table 9.2750 Residential Zone Development Standards unless specifically exempted elsewhere in this land use code. All dwelling types are permitted if approved through the Planned Unit Development process.)					
Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot)	P(2)		P(2)	P(2)	P(2)

Section 6. Subsection (2) of Section 9.2741 of the Eugene Code, 1971, is amended to provide as follows:

9.2741 Special Use Limitations for Table 9.2740.

(2) Accessory Dwellings. Accessory dwellings are subject to the standards at EC 9.2750 and EC 9.2751, except that new accessory dwellings are prohibited on alley access lots.

Section 7. The following entries under the "Maximum Building Height," "Minimum Building Setbacks," "Maximum Lot Coverage" and "Secondary Dwellings" sections in Table 9.2750 of Section 9.2750 of the Eugene Code, 1971, are amended to provide as follows:

Table 9.2750 Residential Zone Development Standards
(See EC 9.2751 Special Development Standards for Table 9.2750.)

	R-1	R-1.5	R-2	R-3	R-4
Maximum Building Height (2), (3), (4), (5), (16), (17), (18)					
Accessory Dwelling	See (17)	--	See (17)	See (17)	See (17)
Minimum Building Setbacks (2), (4), (6), (9), (10), (11), (16), (17), (18)					
Interior Yard Setback for Accessory Dwellings	See (17)	--	See (17)	See (17)	See (17)
Maximum Lot Coverage (17), (18)					
Lots with Accessory Dwellings (Area-Specific)	See (17)(c)	--	See (17)(c)	See (17)(c)	See (17)(c)
~~Secondary~~ Accessory Dwellings (17)					

Table 9.2750 Residential Zone Development Standards (See EC 9.2751 Special Development Standards for Table 9.2750.)					
	R-1	R-1.5	R-2	R-3	R-4
General Standards	See (17)(a) and (b)	--	See (17)(a) and (b)	See (17)(a) and (b)	See (17)(a) and (b)
Area-Specific	See (17)(c)	--	See (17)(c)	See (17)(c)	See (17)(c)

Section 8. Subsection (2) of Section 9.3060 of the Eugene Code, 1971, is amended to provide as follows:

9.3060 S-C Chambers Special Area Zone – Land Use and Permit Requirements and Special Use Limitations. Except where the standards in EC 9.3065 S-C Chambers Special Area Zone Development Standards specifically provide otherwise:

(2) The land use and permit requirements and special use limitations applicable in the S-C/R-2 subarea shall be those set out at EC 9.2740 and EC 9.2741 for uses in the R-2 zone, except that any additional (interior, attached or detached) residential structure that is used in connection with or that is accessory to a single family dwelling may be permitted on a lot only as an additional "One-Family Dwelling" and not as an "Accessory Dwelling."

Section 9. The "Dwellings" subsection in the "Residential" section in Table 9.3115 of Section 9.3115 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.3115 S-CN Chase Node Special Area Zone Land Uses and Permit Requirements			
Land Use Type	C	HDR/MU	HDR
Residential			
Dwellings (All dwellings shall meet minimum and maximum density requirements for development within the Chase Gardens Plan area.)			
One Family Dwelling per lot (Includes zero lot line dwellings)		P	P
Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot)		P	P
Controlled Income and Rent Housing where density is above that normally required in the zoning district but does not exceed 150% of the maximum permitted density. (Shall comply with multiple-family standards in EC 9.5500.		S	S
Rowhouse (One-family on own lot attached to adjacent residence on separate lot)	P(3)(4)	P(3)(4)	P(3)(4)
Duplex (Two-family attached on the same lot)		P	P
Tri-plex (Three family attached on the same lot) (See EC 9.5500)		P	P

Table 9.3115 S-CN Chase Node Special Area Zone Land Uses and Permit Requirements			
Land Use Type	**C**	**HDR/MU**	**HDR**
Four-plex (Four-family attached on the same lot) (See EC 9.5500)		S	S
Multiple Family (3 or more dwellings on the same lot) (See 9.5500)	S	S	S
Manufactured Home Park (See 9.5400)			P(5)

Section 10. The "Maximum Building Height" section in Table 9.3125(3)(g) of Section 9.3125 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.3125(3)(g) S-CN Chase Garden Node Special Zone Development Standards (See EC 9.3126 Special Development Standards for Table 9.3125(3)(g).)			
	C	**HDR/MU**	**HDR**
Maximum Building Height (3)			
Main Building	50' commercial, 120' residential or residential above commercial	120' except (3); 35' or 2 stories within 50' of Garden Way	120'
Accessory Building.		30'	30'
Accessory Dwellings Detached from Main Building		30'	30'

Section 11. The "Dwellings" subsection in the "Residential" section in Table 9.3210 of Section 9.3210 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.3210 S-DW Downtown Westside Special Area Zone Uses and Permit Requirements	
	S-DW
Residential	
Dwellings (All dwellings types are permitted if approved through the Planned Unit Development process.)	
One-Family Dwelling (1 Per Lot)	P
Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot)	P
Rowhouse (One-Family on Own Lot Attached to Adjacent Residence on Separate Lot with Garage or Carport Access to the Rear of the Lot)	P
Duplex	P
Tri-plex (Three-Family Attached on Same Lot)	P
Four-plex (Four Family Attached on Same Lot)	P
Multiple-Family (3 or More Dwellings on Same Lot) (See EC 9.5500)	P

Section 12. Subsection (2) of Section 9.3215 of the Eugene Code, 1971, is amended to provide as follows:

9.3215 S-DW Downtown Westside Special Area Zone Development Standards.
(2) Residential Standards. Except as provided in this section or EC 9.3216

Special Development Standards for Table 9.3215, all residential development shall be subject to the standards established for the R-4 zone. Accessory dwellings shall be subject to the R-4 standards, except EC 9.2751(17).

Section 13. The "Dwellings" subsection in the "Residential" section in Table 9.3310 of Section 9.3310 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.3310 S-E Elmira Road Special Area Zone Uses and Permit Requirements

	S-E
Residential	
Dwellings	
One-Family Dwelling (1 Per Lot)	P
Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot)	P
Rowhouse (One-Family on Own Lot Attached to Adjacent Residence on Separate Lot with Garage or Carport Access to the Rear of the Lot)	P
Duplex (Two-Family Attached on Same Lot)	P
Multiple Family (3 or More Dwellings on Same Lot) (See EC 9.5500)	PUD

Section 14. Subsection (1) of Section 9.3510 of the Eugene Code, 1971, is amended to provide as follows:

9.3510 **S-HB Blair Boulevard Historic Commercial Special Area Zone Uses.** The S-HB zone designation is based on the area's association with the city's working class and the mix of residential, commercial and light industrial uses within the zone. The S-HB zone is the commercial core of the residential districts located to the east and west of the zone. The Whiteaker Plan Land Use Diagram reflects four underlying land use designations for this zone of residential, commercial, mixed use, and parks. Uses permitted within the S-HB zone are as follows:

(1) Areas Designated for Low and Medium Density Residential. Allowable uses are:

(a) One-family dwellings.
(b) Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot).
(c) Duplexes.
(d) Triplexes.
(e) Four-plexes.
(f) Multiple-family dwellings.
(g) Home occupations.
(h) Bed and breakfast facilities.

Section 15. A new subsection (2) is added to Section 9.3615 of the Eugene Code, 1971, and the following subsection is renumbered, to provide as follows:

9.3615 **S-JW Jefferson Westside Special Area Zone Land Use and Permit Requirements and Special Use Limitations.** The land use and permit requirements and special use limitations applicable in the S-JW Jefferson Westside Special Area Zone shall be those set out at EC 9.2740 and EC 9.2741 for uses in the R-2 zone, except:

(1) The following uses listed on Table EC 9.2740 are prohibited in the S-JW

Jefferson Westside Special Area Zone:
(a) Correctional Facilities.
(b) C-1 Neighborhood Commercial Zone permitted uses, unless such a use is specifically listed in another row on Table 9.2740 as an allowable use under the "R-2" column.

(2) Any additional (interior, attached or detached) residential structure that is used in connection with or that is accessory to a single family dwelling may be permitted on a lot only as an additional "One-Family Dwelling" and not as an "Accessory Dwelling."

Section 16. The "Dwellings" subsection in the "Residential" section in Table 9.3810 of Section 9.3810 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.3810 S-RN Royal Node Special Area Zone Land Uses and Permit Requirements

	LDR	MDR	RMU	CMU	MSC
Residential					
Dwellings. (All dwellings shall meet minimum and maximum density requirements for development within the Royal Specific Plan area. All dwelling types are permitted.)					
One-Family Dwelling (1 Per Lot, includes zero lot line dwellings)	P	P	P		
Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot)	P(1)	P(1)	P(1)		
Rowhouse (One-Family on Own Lot Attached to Adjacent Residence on Separate Lot with Garage or Carport Access to the Rear of the Lot)	P(2) (3)	P(2) (3)	P(2) (3)	P(2) (3)	P(2) (3)
Duplex (Two-Family Attached on Same Lot)	P	P	P		
Tri-plex (Three family attached on the same lot) See EC 9.5500	P	P	P	P	
Four-plex (Four-Family Attached on Same Lot) See EC 9.5500	P	P	P		
Multiple-Family (3 or More Dwellings on Same Lot) See EC 9.5500	S(3) (9)	S(3) (9)	S(3) (9)	S(3) (9)	S(3) (9)
Manufactured Home Park. Shall comply with EC 9.5400 or site review.	S - SR (4)	S - SR (4)			
Controlled Income and Rent Housing where density is above that normally permitted in the zoning district but does not exceed 150% of the maximum permitted density. (Shall comply with multiple-family standards in EC 9.5500.)	S (9)	S (9)			

Section 17. The "Maximum Building Height" section in Table 9.3815(3)(n) of Section 9.3815 of the Eugene Code, 1971, is amended to provide as follows:

Table 9.3815(3)(n) S-RN Royal Node Special Zone Development Standards (See EC 9.3816 Special Development Standards for Table 9.3815(3)(n).)

	LDR	MDR	RMU	CMU	MSC
Maximum Building Height					
Main Building	35 feet	35 feet	50'	50'	50'
Accessory Building.	25 feet	25 feet	50'	50'	50'

Table 9.3815(3)(n) S-RN Royal Node Special Zone Development Standards (See EC 9.3816 Special Development Standards for Table 9.3815(3)(n).)					
	LDR	MDR	RMU	CMU	MSC
Accessory Dwellings Detached from Main Building	25 feet	25 feet	25 feet		

Section 18. The "Accessory Uses" section, and the "Dwellings" subsection of the "Residential" section in Table 9.3910 of Section 9.3910 of the Eugene Code, 1971, are amended to provide as follows:

Table 9.3910 S-W Whiteaker Special Area Zone Uses and Permit Requirements	
	S-W
Accessory Uses	
Accessory Uses. Examples related to residential uses include a garage, storage shed, bed and breakfast facility (see EC 9.5100) and home occupations (see EC 9.5350). Examples relating to commercial and employment and industrial uses include security work, administration activity and sales related to industrial uses manufactured on the same development site, and storage and distribution incidental to the primary use of the site.	P
Residential	
Dwellings	
One-Family Dwelling	P(2)
Accessory Dwelling (1 Per Detached One-Family Dwelling on Same Lot)	P(2)
Rowhouse (One-Family on Own Lot Attached to Adjacent Residence on Separate Lot with Garage or Carport Access to the Rear of the Lot)	P(2)
Duplex (Two-Family Attached on Same Lot)	P(2)
Tri-plex (Three-Family Attached on Same Lot)	P(2)
Multiple Family (3 or More Dwellings on Same Lot) (See EC 9.5500)	P(2)

Section 19. The first paragraph and subsection (1) of Section 9.3915 of the Eugene Code, 1971, are amended, and a new subsection (13) is added, to provide as follows:

9.3915 **S-W Whiteaker Special Area Zone Development and Lot Standards.** Except as provided in subsections (5) to (13) of this section, sections 9.6000 to 9.6885 General Standards for All Development in this land use code shall apply within this S-W zone. In the event of a conflict between the general development standards of this land use code and the standards set forth in this section, the specific provisions of this section shall control.

(1) **Residential Standards.** Except as provided in subsections (5) to (13) of this section, all residential development shall be subject to the standards established for the C-2 zone.

(13) Accessory dwellings shall be subject to the standards established at EC 9.2750 and EC 9.2751(17).

Section 20. The findings set forth in Exhibit A attached to this Ordinance are adopted as findings in support of this Ordinance.

Section 21. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in

other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Section 22. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 23. Pursuant to the provisions of Section 32(2) of the Eugene Charter of 2002, with the affirmative vote of two-thirds of the members of the City Council, this Ordinance shall become effective on July 1, 2018. An effective date of less than 30 days is necessary to conform to State Law. If a lesser majority votes affirmatively, the effective date shall be as provided at Section 32(1) of the Eugene Charter of 2002.

Passed by the City Council this
11th day of June, 2018

Deputy City Recorder

Approved by the Mayor this
13 day of June, 2018

Mayor

Exhibit A

Preliminary Findings

Secondary (Accessory) Dwellings (Phase 1 Implementation of Senate Bill 1051)
(City File CA 18-1)

Findings

Eugene Code Section 9.8065 requires that the following approval criteria (in ***bold italics***) be applied to a land use code amendment:

(1) The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.

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.

The City has acknowledged provisions for community involvement which ensure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The land use code amendments do not amend the citizen involvement program. The process for adopting these amendments complied with Goal 1 because it is consistent with the City's acknowledged citizen involvement provisions.

A Notice of Proposed Amendment was filed with the Oregon Department of Land Conservation and Development on January 30, 2018. A public hearing was held before the Planning Commission on March 6, 2018. On March 26, 2018, the Planning Commission recommended that the City Council approve the proposed amendments to expand the areas in which accessory dwellings are allowed in the city. On March 27, 2018, a Revised Notice of Proposed Amendment was filed with the Oregon Department of Land Conservation and Development, incorporating the Planning Commission's recommended amendments. A public hearing was held before the City Council on April 16, 2018. Consistent with land use code requirements, the Planning Commission public hearing on the proposal was duly noticed to all neighborhood organizations in Eugene, as well as community groups and individuals who requested notice. In addition, notice of the public hearing was published in the Register Guard. Information concerning the amendments, including the dates of the public hearings, were posted on the City of Eugene website.

These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the ordinance is consistent with Statewide Planning Goal 1.

Goal 2 - Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

Eugene's land use code specifies the procedure and criteria that were used in considering these amendments. The record shows that there is an adequate factual basis for the amendments. The

Exhibit A

Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens.

To comply with the Goal 2 coordination requirement, the City engaged in an exchange about the subject of these amendments with all of the affected governmental units. Specifically, the City provided notice of the proposed action and opportunity to comment to the Oregon Department of Land Conservation and Development, as well as to Lane County and the City of Springfield. There are no exceptions to Statewide Planning Goal 2 required for these amendments. Therefore, the amendments are consistent with Statewide Planning Goal 2.

Goal 3 - Agricultural Lands. To preserve agricultural lands.

The amendments are for property located within the urban growth boundary and do not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

Goal 4 - Forest Lands. To conserve forest lands.

The amendments are for property located within the urban growth boundary and do not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. To conserve open space and protect natural and scenic resources.

OAR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

These amendments do not create or amend the City's list of Goal 5 resources, do not amend a code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, do not allow new uses that could be conflicting uses with a significant Goal 5 resource site and do not amend the acknowledged urban growth boundary. Therefore, Statewide Planning Goal 5 does not apply.

Goal 6 - Air, Water and land Resource Quality. To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air,

water and land from impacts from those discharges. The amendments to not affect the City's ability to provide for clean air, water or land resources. Therefore, Statewide Planning Goal 6 does not apply.

Goal 7 - Areas Subject to Natural Disasters and Hazards. To protect life and property from natural disasters and hazards.

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, landslides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The amendments do not affect the City's restrictions on development in areas subject to natural disasters and hazards. Further, the amendments do not allow for new development that could result in a natural hazard. Therefore, Statewide Planning Goal 7 does not apply.

Goal 8 - Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The amendments do not affect the City's provisions for or access to recreation areas, facilities or recreational opportunities. Therefore, Statewide Planning Goal 8 does not apply.

Goal 9 - Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The amendments do not impact the supply of industrial or commercial lands. Therefore, the amendments are consistent with Statewide Planning Goal 9.

Goal 10 - Housing. To provide for the housing needs of citizens of the state.

Goal 10 requires communities to provide an adequate supply of residential buildable land to accommodate estimated housing needs for a 20-year planning period. The Residential Lands Supply Study (2017) was adopted by the City of Eugene as a refinement of the Envision Eugene Comprehensive Plan, and complies with the requirements of Goal 10 and the corresponding Administrative Rule. According to the Residential Lands Supply Study, there is sufficient buildable residential land to meet the identified land need.

The amendments do not impact the supply of residential buildable land. No land is being re-designated from residential use to a nonresidential use, and the amendments do not otherwise diminish the amount of lands available for residential use. Rather, the amendments increase the capacity of existing residential land, by increasing the potential number of dwelling units that could be built without adversely impacting the residential land inventory.

Exhibit A

The provisions specific to the S-JW Jefferson Westside and the S-C Chambers Special Area Zones recognize that those zones already allow for a second one-family dwellings that can be an interior, attached or detached residential structure that is used in connection with or that is accessory to a single family dwelling, and are therefore already in compliance with state law.

Accordingly, the amendments do not impact the supply or availability of residential lands included in the documented supply of "buildable land" that is available for residential development as inventoried in the acknowledged Residential Lands Supply Study. Therefore, the amendments are consistent with Statewide Planning Goal 10.

Goal 11- Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The amendments do not affect the City's provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

Goal 12- Transportation. To provide and encourage a safe, convenient and economic transportation system.

The Transportation Planning Rule (OAR 660-012-0060) contains the following requirement:

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- *(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- *(b) Change standards implementing a functional classification system; or*
- *(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
  - *(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
  - *(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
  - *(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP*

or comprehensive plan.

The amendments do not change the functional classification of a transportation facility, change the standards implementing a functional classification system or degrade the performance of a facility otherwise projected to not meet performance standards. Therefore, the amendments do not have a significant effect under (A) or (B). In regards to (C), the relatively small number of homes that are expected to be developed as a result of the accessory dwelling provisions will have a negligible impact on any transportation facility. Therefore, the amendments do not significantly affect any existing or future transportation facilities. Based on the above findings, the amendment is consistent with Statewide Planning Goal 12.

Goal 13 - Energy Conservation. To conserve energy.

The amendments do not impact energy conservation. Therefore, Statewide Planning Goal 13 does not apply.

Goal 14 - Urbanization. To provide for an orderly and efficient transition from rural to urban land use.

The amendments do not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

Goal 15 - Willamette River Greenway. To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The amendments do not contain any changes that affect the Willamette River Greenway regulations, therefore, Statewide Planning Goal 15 does not apply.

Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

There are no coastal, ocean, estuarine, or beach and dune resources related to the property effected by these amendments. Therefore, these goals are not relevant and the amendments will not affect compliance with Statewide Planning Goals 16 through 19.

(2) The amendment is consistent with applicable provisions of the comprehensive plan and applicable adopted refinement plans.

Applicable Metro Plan Policies

The following policies from the *Metro Plan* (identified below in *italics*) are applicable to these amendments. To the extent that the following policies constitute mandatory approval criteria, based on the findings provided below, the amendments are consistent with and supported by the applicable provisions of the *Metro Plan*.

Exhibit A

Residential Land Use and Housing Element

A.13 Increase overall residential density in the metropolitan area by creating more opportunities for effectively designed in-fill, redevelopment, and mixed use while considering impacts of increased residential density on historic, existing and future neighborhoods.

The intent of the amendments is to create more opportunities citywide for accessory dwellings in areas designed for residential use, consistent with this policy. The standards currently in place for accessory dwellings will continue to apply at this time which will ensure minimal impact on surrounding properties in historic, existing and future neighborhoods.

A.17 Provide opportunities for a full range of choice in housing type, density, size, cost and location.

A.18 Encourage a mix of structure types and densities within residential designations by reviewing and, if necessary, amending local zoning and development regulations.

Consistent with these policies, the amendments provide for more opportunities for smaller housing types within existing and future residential neighborhoods.

Envision Eugene Comprehensive Plan

The Envision Eugene Comprehensive Plan does not contain any policies relevant to this amendment.

Applicable Refinement Plans

Given the broad applicability of this amendment, all adopted refinement plans were reviewed for consistency. No relevant policies were found in the following adopted refinement plans:

- Bethel-Danebo Refinement Plan (1982)
- Bethel-Danebo Refinement Plan Phase II (1977)
- Eugene Downtown Plan (2004)
- Eugene (EWEB) Downtown Riverfront Specific Area Plan (2013)
- Fairmount/U of O Special Area Study (1982)
- Laurel Hill Neighborhood Plan (1982)
- 19th and Agate Special Area Study (1988)
- South Hills Study (1974)
- South Willamette Subarea Study (1987)
- Walnut Station Specific Area Plan (2010)
- Westside Neighborhood Plan (1987)
- West University Refinement Plan (1982)
- Whiteaker Plan (1994)
- Willow Creek Special Area Study (1982)

Findings addressing relevant provisions of applicable refinement plans are provided below.

Exhibit A

Jefferson Far West Refinement Plan (1983)
The following residential policies in the Land Use Element of the plan lend general support for the amendment:

3.0 *Encourage a mixture of housing densities and types to allow a diverse population group to live in the area.*

The amendments are consistent with these policies in that they will continue to provide the opportunity for smaller single family housing types.

River Road-Santa Clara Urban Facilities Plan (1987)
The following policies from the Residential Land Use section are relevant:

1.0 *Recognize and maintain the predominately low-density residential character of the area consistent with the Metro Plan.*

2.0 *Provide a diversity of housing types in the area. Available techniques include encouraging reinvestment and rehabilitation of existing housing stock and the use of development standards that provide for clustering or planned unit development.*

Consistent with these policies, the amendments allow for accessory dwellings (a smaller type of single family housing) in additional areas within these neighborhoods.

Willakenzie Area Plan (1992)
Although there are no policies in this refinement plan that directly address the amendment or constitute mandatory approval criteria, the following land use policies lends general support for the amendment:

Residential Policies
1. *Maintain the existing low-density residential character of existing Willakenzie neighborhoods, while recognizing the need to provide housing for all income groups in the city.*

4. *Encourage a mixture of housing densities and types to address the housing needs of a diverse population.*

The amendment to allow for accessory dwellings in additional residential areas strike a balance between maintaining the character of existing low density neighborhoods and providing housing for all income levels, consistent with this policy.

Based on the above findings, the proposal is consistent with and supported by the applicable provisions of these adopted plans.

(3) The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area

Exhibit A

Zone, in the case of establishment of a special area zone.

The amendments do not establish a special area zone. Therefore, this criterion does not apply.