



November 12, 2019

Mayor and City Council of Albany
333 Broadalbin Street Southwest
Albany, OR 97321

Re: Albany Development Code (ADC) amendments related to Accessory Dwelling Units (ADU) (DC-02-19)

Dear Mayor and Council Members:

This letter is submitted jointly by Housing Land Advocates (HLA) and the Fair Housing Council of Oregon (FHCO). Both HLA and FHCO are non-profit organizations that advocate for land use policies and practices that ensure an adequate and appropriate supply of affordable housing for all Oregonians. FHCO's interests relate to a jurisdiction's obligation to affirmatively further fair housing. Please include these comments in the record for the above-referenced proposed amendment.

As you know, and as reflected in the staff report, all amendments to the City's Comprehensive Plan and Zoning map must comply with the Statewide Planning Goals. ORS 197.175(2)(a). When a decision is made affecting the residential land supply, the City must refer to its Housing Needs Analysis (HNA) and Buildable Land Inventory (BLI) in order to show that an adequate number of needed housing units (both housing type and affordability level) will be supported by the residential land supply after enactment of the proposed change.

The staff report for the proposed ADC amendments recommends its approval. This recommendation is contingent on the Goal 10 findings, stating that since the changes "increase options in residential areas" they comply with Goal 10. However, the addition of options to the City does not result in automatic compliance with Goal 10. The ADC amendments need to be justified and quantified to provide an adequate basis for the Goal 10 findings. For example, how much needed housing and at what affordability ranges will be generated by the code amendments? How will the requirements dictating ADU sizes and minimum lot size



requirements affect these code amendments' ability to generate needed housing? Goal 10 findings must demonstrate that the changes do not leave the City with less than adequate residential land supplies in the types, locations, and affordability ranges affected. *See Mulford v. Town of Lakeview*, 36 Or LUBA 715, 731 (1999) (rezoning residential land for industrial uses); *Gresham v. Fairview*, 3 Or LUBA 219 (same); see also, *Home Builders Assn. of Lane Cty. v. City of Eugene*, 41 Or LUBA 370, 422 (2002) (subjecting Goal 10 inventories to tree and waterway protection zones of indefinite quantities and locations). Further, the report should reference the need for these code amendments by utilizing the City's HNA. Only with a complete analysis showing any gain in needed housing as dictated by the HNA and compared to the BLI, can housing advocates and planners understand whether the City is achieving its goals through these code amendments.

Additionally, it should be noted that the proposed code amendments are not in compliance with both ORS 197.312(5). Under ORS 197.312(5) the only permissible regulation of ADUs by local governments is through "siting and design" requirements. The proposed code amendments contain minimum lot area requirements for ADUs, which have nothing to do with siting and design of the ADU. These requirements completely defeat the purpose and intent of the statutes, given that through this section of the code, Albany could render the majority of its lots non-conforming and prohibit the construction of ADUs. Further, the requirement that an ADU be "incidental in size" to an existing Single Family Home (SFH), in addition to the text stating that "the size of an [ADU] may not exceed 50 percent of the gross floor area of the primary residence (excluding garages or carports) or 750 square feet, whichever is less," is in violation of ORS 197.312(5)(a). ORS 197.312(5)(a) states that local governments must allow both ADUs that are an "accessory to" an SFH *and* those that are "used in connection with" an SFH. The only requirement for an ADU to be considered "used in connection with" an SFH is that it be located on the same lot. There is nothing within ORS 197.312(5)(a) that deems it permissible to regulate ADUs "used in connection with" an SFH based on gross floor area.

HLA and FHCO urge the Council to defer approval of the proposed ADC amendments until adequate Goal 10 findings can be made and the amendments are in compliance with ORS 197.312(5). Thank you for your consideration. Please provide written notice of your decision to,



FHCO, c/o Louise Dix, at 1221 SW Yamhill Street, #305, Portland, OR 97205 and HLA, c/o Jennifer Bragar, at 121 SW Morrison Street, Suite 1850, Portland, OR 97204. Please feel free to email Louise Dix at ldix@fhco.org or reach her by phone at (541) 951-0667.

Thank you for your consideration.

A handwritten signature in blue ink that reads "Louise Dix".

Louise Dix
AFFH Specialist
Fair Housing Council of Oregon

A handwritten signature in blue ink that reads "Jennifer Bragar".

Jennifer Bragar
President
Housing Land Advocates

cc: Kevin Young (kevin.young@state.or.us)