



December 12, 2019

Mayor and Council Members of the City of Lake Oswego  
P.O. Box 369  
380 A Avenue  
Lake Oswego, OR 97034

**Re: LU 19-0033, Ordinance 2832**

Dear Mayor O'Neill 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. This comment letter could have arrived for Planning Commission consideration if the City had issued its staff report for that meeting with seven days advance review instead of four days, which was inadequate time for our review of this important amendment.

Lake Oswego appears to be making a pattern and practice of foreclosing public participation in important land use matters. For example, due to the expedited nature of the demolition tax that the City Council recently enacted, HLA was unable to provide a comment letter from its board on this important matter. Both FHCO and HLA reviewed a November 12, 2019 Wall Street Journal article, wherein Mayor O'Neill was quoted:

"Lake Oswego city council member Skip O'Neill, who works in real estate as a general contractor, said a new \$15,000 tax shouldn't make much of a difference for construction in a town where new homes go on the market for more than a million dollars.



"The people that are moving here, they are not moving here for affordable housing,' he said."

Both HLA and FHCO take exception to these statements – many homes in Lake Oswego are market rate affordable to families purchasing their first or second home – who look to Lake Oswego to call home because of quality of life it offers, including its schools. The failure of the City to consider these folks and the historic exclusion of lower income people, who could likely afford an ADU, should not be kept out of the City by unreasonable regulation of ADUs or the imposition of code requirements that make such ADUs unaffordable by definition. Please consider this context in relation to the following comments.

As you know, 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 Community Development Code (CDC) amendments recommends its approval. However, the report does not include findings for Statewide Planning Goal 10, describing the effects of these changes on the availability of needed housing within the City. For example, no analysis of the number of anticipated units of housing are analyzed with respect to the ADU CDC changes. Goal 10 findings must demonstrate that the proposed 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 how these changes align with the housing needs as dictated by the City's HNA. Only with a complete analysis showing any gain in needed housing as compared to the BLI can housing advocates and planners understand whether the City is achieving its goals through the proposed CDC changes.



Additionally, it should be noted that the proposed code amendments are not in compliance with both ORS 197.312(5) and HB 2001. First, HB 2001 and ORS 197.312(5) state that the only permissible regulation of ADUs by local governments is through “siting and design” requirements. The proposed code amendments state that ADUs are subject to minimum lot area and maximum density requirements ("The unit is in conformance with the site development requirements of the underlying zone"), which have nothing to do with ADU siting and design. The City is expressly prohibited from creating requirements, like minimum lot dimensions in the “Dimensional Table,” that do not relate to the ADU itself. These requirements completely defeat the purpose and intent of the state regulations, given that through this section of the code, Lake Oswego could render the majority of its lots non-conforming and prohibit the construction of ADUs.

Second, the requirement that an ADU be a maximum of “800 sq. ft. of gross floor area” 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” a Single Family Home (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 where an ADU is located on the same lot as the SFH. No other language within ORS 197.312(5)(a) deems it permissible to regulate ADUs “used in connection with” a SFH based on gross floor area.

Third, the screening requirement dictating that an ADU within 10 feet of a property line must be screened with a 6 ft tall wood fence may be considered a siting and design requirement, but it is not a siting and design requirement of the ADU itself, and in any event would not be considered a reasonable site and design regulation. Again, based on both HB 2001 and ORS 197.312, the local government may only regulate ADUs through siting and design standards of the ADU itself, not the property on which it is located.

HLA and FHCO urge the Council to defer adoption of the proposed until Goal 10 findings can be made, and the amendments are in compliance with ORS 197.312(5) and HB 2001. 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](mailto: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](mailto:kevin.young@state.or.us))