



April 17, 2025

BY EMAIL

Dept. of Land Conservation and Development  
Housing Division  
635 Capitol Street NE, Suite 150  
Salem, OR 97301

Re: City of Happy Valley Housing Production Strategy (HPS)

Dear Dept. of Land Conservation and Development,

Both Housing Land Advocates (HLA) and the Fair Housing Council of Oregon (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. HLA and FHCO support the Oregon Legislative Assembly's stated goal of encouraging the "production of housing to meet the need of Oregonians at all levels of affordability."

We commend the staff of the City of Happy Valley and the consultants from Winterbrook Planning who worked so diligently to prepare the City's February 2025 Housing Production Strategy (HPS). However, we have serious concerns that the HPS does not adequately plan for adding housing to accommodate an additional 3,000 households over the next 15 years.

The City adopted an HPS which takes four broad strategies for increasing housing production. Strategy "A" hopes to promote, educate, and clarify existing opportunities to access and develop housing within the City. The four tactics used within this strategy are practical and could lead to more accessible housing options for residents. However, HLA and FHCO are concerned that the City is proposing to wait three years (only beginning in 2028) to develop a toolkit to help developers of affordable housing work within the City's code. Given that the requirements of the City's ordinances are readily available, HLA and FHCO suggest the City work more quickly to prepare an affordable-housing developer toolkit.

The City's strategy "B" is, likewise, commendable but the four tactics are tenuously connected. Tactic B.1 has the City working with the Oregon Department of Transportation ("ODOT") to improve connections with Highway 212. However admirable this goal is, the City does not adequately explain why this effort should be considered part of its housing production strategy let alone the connection this tactic has with encouraging the development of housing within Happy Valley. While tactic B.1 likely is an important consideration for the City moving forward, HLA and FHCO question what role the ODOT coordination will play in a housing production strategy. Generally, we agree that transportation and housing intersect, but without more detail

we cannot understand what efforts will result in more housing aside from a generic attempt to improve connectivity.

Further, tactic B.4 must be explained in more detail before it can be considered sufficient. The City claims that it will update its comprehensive plan and "look at the capacity of areas of the city to accommodate new housing." HPS at 51. Given the City's recent attempted changes to its zoning ordinances in the currently pending appeal of the City's middle housing code amendments (*HLA v. City of Happy Valley*, LUBA Nos 2024-074/075), HLA and FHCO view this tactic with suspicion.

In the HPS, the City notes that the "first and easiest change" would be to eliminate the R-40 designation which affected environmentally constrained land. However, the HPS then goes on to explain that the land within the R-40 zone "typically has environmental overlays to protect it from unsuitable development." *Id.* DLCD needs to be aware that the City has recently used its environmental overlay zones to exclude cottage clusters from the acceptable types of housing throughout much of Happy Valley. (See Ordinance 589). While tactic B.4 may facially claim that the City wants to adjust its zoning to allow for the development of housing, its recent legislative history shows that this is not the City Council's actual goal. HLA and FHCO encourage DLCD to ask the City to further explain how this tactic will be implemented in the wake of recent *actual* changes to the City's ordinances.

HLA and FHCO similarly encourage DLCD to ask the City to explain in more detail how it will accomplish strategy "C." The four tactics within this strategy are aimed at reducing the regulatory restrictions on housing development within Happy Valley. However, the City has a very recent legislative track record of *increasing regulatory restrictions* on housing, notably multifamily housing, within Happy Valley. Specifically, HLA and FHCO would like to draw DLCD's attention to the following statement in the City's HPS:

"a cottage cluster overlay—adopted in 2024—prohibits cottage cluster housing in one area of the city, while expanding allowances elsewhere. Loosening these restrictions on where they can be sited is one way to encourage infill." HPS at 57.

The City is currently resisting changing these restrictions in the above-referenced *HLA v. City of Happy Valley* case. While the HPS states that the City wants to make these changes, its actions clearly show that its intention is to *not* allow this type of housing. Further, if this were an intended strategy, HLA and FHCO wonder why the City did not simply withdraw its ordinance which created the cottage-cluster overlay in the first instance.

The City's tactic C.3 must also be reviewed with more scrutiny. The HPS states that the City wants to remove barriers to ADU development. However, DLCD should note that the HPS explicitly states that any ADU changes are tentative.<sup>1</sup> HLA and FHCO believe that the City should make more concrete commitments to changing its ADU restrictions to satisfy the requirements of the Housing Production Strategy statute.

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<sup>1</sup> The HPS states that these changes "may include." HPS at 57.



A succinct summary of HLA's and FHCO's comments on the City's HPS is that it leaves considerable room for improvement and leaves HLA and FHCO concerned with outcomes that the City can actually affirmatively further fair housing. In fact, we believe that FHCO adequately briefed LUBA on the fact that in adopting the recent middle housing legislation, the City created an obstacle to affirmatively further fair housing by excluding cottage clusters from its most high-income neighborhood, and areas of the City with access to economic and public resources. See briefing attached. The exclusion of cottage clusters from the "Bowl" leaves little opportunity for low income members of the community (who are over-represented by marginalized groups and housing consumers with protected class identities) and for people with disabilities to access this exclusive neighborhood.

Very few solid tactics are described in the HPS to implement the city's four strategies. Instead, the City relies on broad policy ideas that have no substantial explanation of how they will be implemented to try and satisfy its statutory duties. HLA and FHCO encourage DLCD to remand the City's HPS for further explanation of how it will implement its four broad strategies and how it has changed its views and behaviors since the implementation of Ordinance 589.

Please provide written notice of your decision to, FHCO, c/o Shyle Ruder, 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. Thank you for your consideration.



John Miller  
Executive Director  
Fair Housing Council of Oregon



Jennifer Bragar  
President  
Housing Land Advocates

Enclosures

cc: HLA Board (by email)

BEFORE THE LAND USE BOARD OF APPEALS  
FOR THE STATE OF OREGON

FAIR HOUSING COUNCIL OF OREGON,  
An Oregon nonprofit corporation,

Petitioner;

and

HOUSING LAND ADVOCATES,  
An Oregon nonprofit corporation,

Petitioner;

v.

CITY OF HAPPY VALLEY, An Oregon  
Municipal Corporation,

Respondent.

LUBA No. 2024-074 and  
2024-075 (Consolidated)

PETITIONER FAIR  
HOUSING COUNCIL OF  
OREGON'S PETITION  
FOR REVIEW

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LUBA No. 2024-074 and  
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PETITIONER FAIR  
HOUSING COUNCIL OF  
OREGON'S PETITION  
FOR REVIEW

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## I. PETITIONER'S STANDING

Petitioner Fair housing Council of Oregon ("FHCO" or "Petitioner") filed a timely notice of intent to appeal under ORS 197.830(1) on October 15, 2024. ORS 197.830(2)(a). Additionally, FHCO submitted written testimony into the record on September 10th, 2024 ("FHCO's Written Testimony"). Rec. 79-80.

FHCO is an Oregon non-profit corporation dedicated to eliminating unlawful housing discrimination throughout Oregon. FHCO operates under multiple federal, state, and local grants, in part, to advocate for fair housing practices throughout the state, especially those housing practices with an undue influence on housing consumers and communities with protected class identities. Advocacy at FHCO takes many forms, including advocating for and holding governments accountable to land use policies that affirmatively further fair housing; advocate to and advise local governments to ensure *de jure* or *de facto* segregation of historically discriminated against communities does not result from municipal housing production decisions; and ensure that no Oregonian is denied opportunities for safe, affordable housing based on their protected class identities.

## II. STATEMENT OF THE CASE

### A. Nature of Land Use Decision

On September 17, 2024, The City of Happy Valley ("Respondent" or "the City") a municipal government in the State of Oregon, through its City Council adopted various code amendments amending Title 16 of the Happy Valley Municipal Code ("HVMC" or the "Municipal Code") through the adoption of the Cottage Cluster Limitation Overlay Zone and other related



1. regulations (the “Amendments”). Rec. 52-66. The Amendments were  
2. designated by the Respondent as File No. LU-0014-2024 and were adopted by  
3. Respondent’s City Council as Ordinance 589 (the “Ordinance”). Rec. 50-51.  
4. The Ordinance was adopted by the City ostensibly to allow for the citing of  
5. cottage clusters in conformance with ORS 197A.420 and OAR  
6. 660-046-0205(3)(b) “performance metric” standard for limiting certain types  
7. of middle housing to a percentage of lots or parcels, and to preserve the  
8. existing character of an older portion of the city, commonly referred to as “the  
9. Bowl”.

10. **B. Relief Sought**

11. For the reasons explained below, FHCO asks the Board to reverse the  
12. Ordinances because they violate ORS 197A.100(2) and are prohibited as a  
13. matter of both applicable state and federal law. ORS 197.835(9)(a)(D); OAR  
14. 661-010-0071(1)(c). In addition, the Board should reverse the Ordinances  
15. because they constitute new land use regulations that are inconsistent with  
16. acknowledged comprehensive plan policies implementing Statewide Planning  
17. Goal 10 and are not supported by an adequate factual basis, as required under  
18. Goal 2. ORS 197.835(5), (7) and (9)(a)(D). In the alternative, FHCO requests  
19. remand for the City to enact amendments that are consistent with ORS  
20. 197.100(2), state and federal law, and to adopt findings that demonstrate  
21. compliance with comprehensive plan policies that govern residential uses and  
22. ensure the appropriate provision of affordable housing.

23. /////

24. /////

25. /////

26. /////

1.           **C.     Summary of the Arguments**

2.           The Ordinance is contrary to Oregon's Land Use Planning Goal 10  
3. and the ORS 197A.100 duty to affirmatively further fair housing in its housing  
4. productions strategy. Affirmatively furthering fair housing is a necessary element  
5. to Goal 10 compliance.

6.           The Respondent did not provide enough in the way of findings to conclude  
7. that the Ordinance affirmatively furthers fair housing. Because the Ordinance  
8. would restrict cottage clusters-a necessary element to middle housing production  
9. (ORS 197A.420)-it would restrict rather than expand housing choice in Happy  
10. Valley. Because the Ordinance concentrates cottage cluster development in the  
11. resource and opportunity poor areas of the city, it would create areas of economic  
12. inopportunity. Because it creates a literal north to south dividing line to indicate  
13. where cottage clusters will be allowed and where development is possible, it  
14. reinforces traditional patterns of segregation. Finally, because it fails to comply  
15. with Title 5 of the civil rights, the Fair Housing Act, and HUD rules on  
16. affirmatively furthering fair housing, it does not conform with federal civil rights  
17. and fair housing laws. The goals and effects of the exclusionary zone proposed by  
18. Respondent are adverse to affirmatively furthering fair housing, and by extension  
19. Goal 10, and must be reversed or remanded.

20.          Additionally, the Respondent did not provide anything in the way of  
21. findings to indicate they considered regional housing needs. In fact, the likely  
22. outcome of the Ordinance is that the Respondent will abdicate its responsibility to  
23. address poverty and house its workforce to surrounding jurisdictions, which  
24. reinforces traditional patterns of segregation and is therefore adverse to the goal of  
25. affirmatively furthering fair housing. Because findings did not indicate a  
26. consideration of regional housing needs, the Ordinance is unlawful.

1. Because the Ordinance fails to affirmatively further fair housing, it is  
2. prohibited as a matter of state law.  
3.

#### 4. **D. Summary of Material Facts**

##### 5. 1. *History of the duty to Affirmatively Further Fair Housing.*

6. The United States has a long history of state sponsored housing  
7. discrimination both at the state and federal level. Nationally, The Federal  
8. Housing Administration (a precursor to HUD) pioneered and institutionalized  
9. redlining by categorizing black neighborhoods as “high risk” under federal  
10. underwriting guidelines. U.S. Federal Housing Administration, *Underwriting*  
11. *Manual*, Pt. II Sec. 9, ¶ 901 *et seq.* (1936). Richard Rothstein, *The Color of*  
12. *Law: A Forgotten History of How Our Government Segregated America*  
13. (Liveright Publ’g Corp. 2017). The GI Bill expanded the middle class by  
14. allowing World War II veterans greater access to homeownership, but federal  
15. policies excluded black veterans from this program, and much of the federal  
16. funding went to neighborhoods with restrictive covenants. *Id. See Also*  
17. Katznelson, Ira. *When Affirmative Action Was White: An Untold History of*  
18. *Racial Inequality in Twentieth-Century America.* (W.W. Norton & Co. 2005).

19. At the state level, Oregon’s early history is one of racial exclusion.  
20. The provisional government in 1844 included an exclusionary provision in its  
21. charter that that prohibited free black people from living in the Oregon  
22. Territory. Or. Sec. of State, *Black in Oregon, National and Oregon Chronology*  
23. *of Events.* [sos.oregon.gov/archives/exhibits/black-history](http://sos.oregon.gov/archives/exhibits/black-history). Those who violated  
24. the law could be whipped every six months until they left. *Id.* The Territory then  
25. adopted the 1850 Exclusionary Law, which did away with whipping, but barred  
26. black families from claim land in the Oregon Territory under the Homestead



1. Act, or to otherwise establish a permanent home. Id. When Oregon adopted its  
2. State Constitution, Article 1, Section 35 read “No free negro or mulatto, not  
3. residing in this State at the time of the adoption of this Constitution, shall ever  
4. come, reside, or be within this State, or hold any real estate, or make any  
5. contracts, or maintain any suit therein.” (1859). In 1862, Oregon instituted a  
6. \$5 annual tax on blacks, Chines, Hawaiians, and "Mulatos" living in the state.  
7. Or. Sec. of State. While Oregon’s exclusionary laws would be rendered largely  
8. unconstitutional by the 14<sup>th</sup> Amendment, it firmly established a hostile social  
9. and legal environment for minority families in Oregon, and black families in  
10. Oregon were flatly denied the opportunity to own land. While Oregon initially  
11. was a signatory to the 14<sup>th</sup> amendment, the state rescinded its ratification two  
12. years after it was ratified, largely in reaction to the first black homestead’s  
13. establishment in the state earlier that year. Id. Oregon would not reverse this  
14. action until 1973. Oregon also refused to Ratify the 15<sup>th</sup> Amendment, and  
15. Oregon’s own exclusionary laws would not be repealed until 1926, despite  
16. many attempts to repeal the unenforceable law prior to then. Id.

17. While Oregon would adopt it’s own fair housing act in 1957 (ahead of  
18. the federal government), it was limited in scope to housing providers who  
19. receive public funds. League of Women Voters of Portland, “A Study of  
20. Awareness of the Oregon Fair Housing Act”, (League of Women Voters, 1961).  
21. The limited scope of Oregon’s first Fair Housing Act, along with decades of  
22. affirmative discrimination, made this effort ineffectual.

23. Locally, in the Portland Metro region, racially exclusive covenants  
24. were commonplace, and “urban renewal” projects were used as the pretext for  
25. displacing established black communities. Gibson, Karen, “Bleeding Albina: A  
26.

History of Community Disinvestment, 1940-2000”, *Transforming Anthropology* (2007).

The exclusionary history of housing in the United States and Oregon could fill a library. The examples above are demonstrative of the affirmative nature of housing exclusion, and while the 14<sup>th</sup> Amendment ostensibly returned black citizens the right to own property, it would take decades before any affirmative effort was made to correct centuries of exclusion.

The first real effort to directly address the long history of housing exclusion was made but John F. Kennedy, who’s administration was the first to prohibit discrimination in federally funded housing projects. Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962). Without robust enforcement, and limited to federally funded housing, this Order proved to be minimally effective. The Civil Rights Act was passed in 1964, but included no provisions for housing. Nevertheless, the progress, coupled with civil unrest in urban areas, lead to the Kerner Commission Report in 1968. This report was the first notable attempt by the United States to address racism as a systemic issue, and noted that housing discrimination led to instability and civil unrest. National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders* (1968).

The federal Fair Housing Act was also passed in 1968. Its passage was fueled in large part to the moral outrage and unrest that followed the assassination of Dr. Martin Luther King Jr, and it was the first federal legislation to impose a duty to affirmatively further fair housing on federal entities and beneficiaries of federal funds. 42 USC 3608(d) .AFFH was adopted into the Fair Housing Act explicitly as an acknowledgement of the federal governments complicity in entrenching segregated living patterns and the

1. resulting civil unrest. Hearings Before the Subcomm. on Housing and Urban  
2. Affairs of the S. Comm. on Banking and Currency, 90th Cong. (1967). The  
3. language of the Act is broad:

4. “All executive departments and agencies shall administer their  
5. programs and activities relating to housing and urban development... in  
6. a manner affirmatively to further the purposes of this subchapter.”

7. 42 USC § 3608(d). It’s application is similarly broad, and the duty applies to  
8. federal fund recipients, like many municipal governments, who are  
9. similarly tasked with affirmatively furthering fair housing. However the  
10. enforcement of AFFH was haphazard and standards were unclear until  
11. recently.

12. In 2015, HUD issued administrative rules providing more detailed  
13. guidance on assessing and addressing barriers to fair housing. It requires  
14. program participants (e.g., local governments, states, and public housing  
15. authorities) to analyze barriers to fair housing and submit an Assessment of  
16. Fair Housing (AFH) that outlines strategies to overcome these barriers. 24  
17. C.F.R. §§ 5.150-5.180(2015).

18. Oregon must reckon with its own exclusionary history as well. In  
19. 2023, the Legislature passed HB 2001, which requires cities to produce  
20. “housing in a way that creates more housing choice by affirmatively  
21. furthering fair housing as defined in ORS 197.290.” ORS 197A.100(2)(d) and  
22. (3)(e). Like the federal requirement, Oregon’s objective in  
23. Affirmatively furthering fair housing is an acknowledgement of the state’s  
24. complicity in the history of housing exclusion and the resulting housing  
25. instability we still see today.  
26.



1. Affirmatively Furthering Fair Housing is a necessary step to  
2. correcting the racist and exclusionary history of our state and nation.  
3. History has shown that a mere theoretical legal right to access housing is not  
4. sufficient to correct decades or centuries of affirmative exclusion. Because  
5. the social, political, and legal efforts to exclude marginalized communities  
6. from housing was affirmative in nature, so too must be the remedy. The  
7. Adoption of AFFH into Oregon's land use policies is an acknowledgment  
8. of our duty as a state and society to address our history.  
9.

10. 2. *Oregon's Housing Crisis and Legislative Actions in Response*

11. Oregon is experiencing a housing crisis that impacts Oregonians throughout  
12. the state, especially marginalized communities, communities of color, and  
13. people with disabilities. Oregon Dept. of Land Conservation & Dev., *Oregon*  
14. *Housing Needs Analysis Legislative Recommendations Report: Leading with*  
15. *Production*, 5, 7, 12, 37, Appendix D (Dec. 31, 2022).  
16.

17. In 2017 House Bill (HB) 4005 created a statewide task force to examine  
18. housing affordability and availability which lead to the passage of Senate Bill  
19. (SB) 1051 (2017), a late-session revival of HB 2007 (2017). HB 2007 was  
20. originally introduced pre-session by then House Speaker Tina Kotek. In her  
21. presentation to the House Committee on Human Services and Housing,  
22. Speaker Kotek stated:

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

1. that we have, and increase the supply of both market rate and  
2. affordable housing.

3.  
4. This committee has worked and passed House Bill 2004, which  
5. strengthens tenant protections, and House Bill 2002, which helps  
6. preserve subsidized housing that is at risk of conversion to market  
7. rate. I applaud the great work that you have done on housing policy  
8. this session. Today, we bring you a bill that addresses the third prong  
9. of our response to this crisis. House Bill 2007 is designed to increase  
10. housing supply by removing barriers to development at the local  
11. level. \* \* \* \* \*

12.  
13. Testimony in Support of House Bill 2007, House Committee on Human  
14. Services and Housing, Speaker of the House Tina Kotek, April 13, 2017.  
15. While House Bill 2007 itself was not passed, the policies undergirding HB  
16. 2007 were the basis for the enactment of SB 1051 (2017) and formed the  
17. foundation for further legislative action over the next decade.

18. SB 1051 focused on lowering barriers to the development of all housing  
19. types by expanding the definition of “needed housing” in ORS 197.300. ORS  
20. 227.175 was amended to require local jurisdictions to adopt “clear and  
21. objective standards” for the development of housing and to limit the ability of  
22. local governments to apply density and height constraints that limit the  
23. development of housing. Meanwhile, ORS 197.307 was amended to allow for  
24. the siting of accessory dwelling units (ADUs) on properties with a detached  
25. single family dwelling. Together, the bill acted to limit the restrictions  
26.

1. municipal governments could place on the density and diversity of housing  
2. development throughout the state.

3. In 2019 the Legislature passed the Omni-Bus Affordable Housing Bill, HB  
4. 2001 (2019). HB 2001 (2019) was enacted to producing more housing choices,  
5. focusing on the provision of more affordable housing options, and requiring  
6. cities with populations over 25,000 to allow the development of “Middle  
7. Housing,” defined as duplexes, triplexes, fourplexes, cottage clusters, and  
8. townhouses in “in areas zoned for residential use that allow for the  
9. development of detached single family dwellings” by June 30, 2022. See  
10. House Bill 2001 (2019). These provisions remain in effect and are now  
11. codified as 197A.420(c) and (3).

12. In conjunction with the adoption of HB 2001 (2019) the legislature passed  
13. HB 2003 (2019) which directed the Department of Land Conservation and  
14. Development (DLCD) and the Housing and Community Services Department  
15. (HCSD) to develop a methodology for calculating the regional need for  
16. housing over a twenty (20) year planning period based on the existing housing  
17. stock. Additionally, cities with populations above 10,000 were required to  
18. develop a housing production strategy to ensure that each city is working to  
19. provide sufficient housing over the planning period which would be reviewed  
20. and approved by DLCD. When cities failed to meet the housing production  
21. metrics, the Land Conservation and Development Commission (LCDC) would  
22. have the ability to issue an order, requiring the city to come into compliance  
23. with its Goal 10 obligations. The goal implicit with the passage of HB 2003  
24. (2019) was that the state intended to take an active role in monitoring and  
25. ensuring that cities complied with their obligations to provide housing  
26. sufficient for their populations.

1. Over the next several sessions, the Legislature has continuously revised and  
2. added to the provisions with the goal of increasing access to all levels of  
3. housing throughout the state, but with particular emphasis on changes that  
4. allow for the addition of “Middle Housing” in communities with populations  
5. above 25,000, which includes Happy Valley.

6. The most recent legislative action to expand access to affordable housing  
7. was HB 2001 (2023). HB 2001 (2023) requires cities to produce “housing in a  
8. way that creates more housing choice by affirmatively furthering fair housing  
9. as defined in ORS 197.290.” ORS 197A.100(2)(d) and (3)(e). “Affirmatively  
10. Furthering Fair Housing” (“AFFH”) was defined by the Legislature to mean  
11. “meaningful actions that, when taken together, address significant disparities in  
12. housing needs and access to opportunity and replace segregated living patterns  
13. with truly integrated and balanced living patterns to transform racially and  
14. ethnically concentrated areas of poverty into areas of opportunity and foster  
15. and maintain compliance with civil rights and fair housing laws.” ORS  
16. 197A.100(9).

17. Additionally, HB 2001 (2023) tasked LCD and DLCD with ensuring that  
18. the adoption of rules related to housing or urbanization pursuant to ORS  
19. 197.286 to 197.314, are guided by the following principles:

20. **(a) Housing that is safe, accessible and affordable in the community of**  
21. **their choice should be available to every Oregonian.**

22. (b) Building enough equitable housing must be a top priority.

23. (c) The development and implementation of the housing production strategy  
24. should be the focal point by which the department collaborates with local  
25. governments to address and eliminate local barriers to housing production.  
26.

(d) Expertise, technical assistance, model ordinances and other tools and resources to address housing production should be provided to local governments, using cooperative planning tools embodied in ORS 197.291 and 197.293, but not to the exclusion of the expedient use of enforcement authority, including compliance orders under ORS 197.319 to 197.335.

**(e) Housing production should support fair and equitable housing outcomes, environmental justice, climate resilience and access to opportunity.**

(f) Housing production should not be undermined by litigation, regulatory uncertainty or repetitive or unnecessary procedures.

(g) Local governments, to the greatest extent possible, should take actions within their control to facilitate the production of housing to meet housing production targets under section 3 of ... HB 2001. Sec. 8, HB 2001 (2023), *and* ORS 197A.025.

While the final rules pursuant to this section have not been promulgated yet, it is clear the legislature intends for the rules surrounding urbanization and housing development approach the issues with an eye toward ensuring all Oregonians are able to live in the community of their choice and that housing production should be fair, equitable, affordable, and provide access to opportunities. This is congruous with the ORS 197A.100 requirement that housing production strategies must affirmatively further fair housing.

Throughout HB 2001 (2023) the emphasis of the act is: (1) reducing barriers to the development of middle housing; (2) tasking local jurisdictions to actively work to add housing in a manner that affirmatively furthers fair housing; and (3) creating a system for monitoring and enforcement when local jurisdiction act as an impediment to the development of housing.



### 3. *The Oregon Housing Needs Analysis*

In addition to establishing AFFH as a housing production objective and establishing guiding principles for DLCD in the adoption of their rules related to housing and urbanization, HB 2001 (2023) commissioned the *Oregon Housing Needs Analysis* (OHNA) for the purpose of furthering (a) production of housing to meet the need of Oregonians at all levels of affordability, and (b) production of housing in a way that creates more housing choice by affirmatively furthering fair housing. Sec. 1, HB 2001 (2023). DLCD and OHCS released The Oregon Housing Needs Analysis Recommendations Report in December 2022 in furtherance of this purpose.

The report explains that Oregon’s unique challenge with zoned capacity limits is not in that they decrease housing production (Oregon has already legislated an increase in the zoned capacity ‘floor’), but in that Oregon needs to ensure higher zoned capacity “is available in the right places so that community members, especially those who have experienced historic marginalization, have meaningful choices in where they live and what kind of housing choices are available to them.” OHNA at p. 8. The OHNA further establishes that Oregon currently creates lower zoned capacity in whiter, more affluent communities and higher zoned capacity in lower income, more diverse communities. *Id. See also Id* at Appx D pp. 33-35 (provides statistical analysis establishing that areas with a higher proportion of white residents are zoned at lower capacities, and the ration of high capacity development in predominantly white areas to more diverse areas).

### 4. *City of Happy Valley*

The City of Happy Valley is a moderately sized city in the Portland Metro area. It is affluent, with a median household income of \$125,000, and

1. predominantly white, with white residents representing 64.1% of the  
2. population. Rec. 450. Happy Valley's largest minority group consists of  
3. persons of Asian descent, representing 18% of the population. Rec 110.

4. The city is bisected into East Happy Valley and West Happy Valley roughly  
5. along the lines of SE 145<sup>th</sup> and 147<sup>th</sup> Avenues. Rec. 106. West Happy Valley  
6. extends to the I-205 Corridor and boasts most of the city's economic and  
7. municipal activity. Most of the schools, parks, and municipal services are  
8. located in West Happy Valley, as well as easier access to the interstate and  
9. public transit that provide access to economic opportunities of the broader  
10. Portland Metro area. East Happy Valley consists largely of agricultural areas  
11. and some service industry businesses toward the southeastern part of the city  
12. along SE Sunnyside Road. Much of East Happy Valley, especially those  
13. sections zoned to allow cottage clusters, is remote from businesses and  
14. services. For many parts of East Happy Valley, the neighboring city of  
15. Damascus provides easier access to services.

16. 5. *Housing Need in Happy Valley*

17. The poverty rate in happy valley is low compared to the surrounding  
18. area. Rec. 451. According to Respondent's own Housing Needs Analysis, this  
19. is not because it is an undesirable place to live for low income families, but  
20. rather because Happy Valley does not meet current demand for affordable  
21. housing. Rec. 468. Approximately 74% of owner occupied housing is has a  
22. market rate of \$330,000 or more, meaning the vast majority of homebuyers in  
23. the city would need an income of \$75,000 or more annually to afford to buy a  
24. home. Rec. 461. Most of the rental housing stock in Happy Valley ranges from  
25. \$1,200 \$2,200 a month, and most consumers would need to make a minimum  
26. of \$50,000 to be able to reliably find rental housing in Happy Valley. Id. The

city's housing analysis concedes that the greatest unmet need for housing is for housing that's affordable at the bottom end of the household income scale. Rec. 464.

The median household income in Oregon is \$80,500, significantly lower than the median household income of Happy Valley at \$125,000. Rec 450. There are significant disparities between the median household income statewide, and the median income for marginalized groups. Black and African American household median income statewide is only \$56,000, and \$60,000 for Native American households. Rec 110. While becoming a resident of Happy Valley is not unobtainable to most Oregonians at or above the statewide median income, it would be difficult or impossible for a disparate proportion of Oregon's marginalized communities to become part of the community of Happy Valley. Homeownership by members of these communities in Happy Valley is available only to the highest earners in that demographic.

It is clear that Happy Valley is in dire need of housing that diversifies housing choice in all areas of the city. Offering a diversity of housing choice will provide more affordability options, and create pathways for Oregon's most marginalized groups to become part of Happy Valley, contribute to the community, and enjoy opportunities that come with living in a mid-sized city in the Metro area.

6. *Cottage Clusters are an essential component to middle housing.*

Cottage clusters are a grouping of no fewer than four detached housing units per acre with a small footprint and a central courtyard. ORS 197A.420(1)(b). They are a form of middle housing that must be allowed in all

1. areas zoned for detached single family homes in cities operating within a  
2. metropolitan service district. ORS 197A.420(2)(a).

3. Cottage clusters are a desirable infill option. They are well suited to  
4. abnormally shaped lots or parcels that other forms of middle housing have a  
5. hard time accommodating. Oregon Dep't of Land Conservation & Dev., *Space-*  
6. *Efficient Housing: Opportunities and Barriers*, 5 (2015). They provide almost  
7. twice the density of single family detached housing, without requiring the  
8. large, rectangular footprint typically required for other middle housing types.  
9. Id. They provide an array of ownership options to meet housing consumers'  
10. various needs, from subdivision into smaller fee simple lots to condo-  
11. association type ownerships. Id at 10. They can also add to rental inventory.

12. There are unique benefits to cottage clusters. Respondent  
13. acknowledges in their Findings that they offer housing options that are more  
14. affordable and accessible for a range of the community's households,  
15. including senior residents, young people, and families. Rec. 121. The  
16. community living style also tends to be desirable to "empty nesters" or  
17. families with children, who value community over house size. *Space Efficient*  
18. *Housing* at 11. Because the housing is detached, it provides a buffer between  
19. private and public spaces. Id. This buffer is beneficial for families with  
20. children, elderly persons, persons with disabilities, and other groups that have  
21. practical reasons to avoid the close proximity and shared walls created by  
22. townhouses, "plexes", and other attached middle housing.

23. Unfortunately, single family homeownership is less accessible to  
24. historically discriminated against communities. White Americans enjoy a  
25. 74.3% rate of homeownership, compared with 49.5% and 45.7% for Hispanic  
26. and Black Americans, respectively. *Rate of Homeownership in the United*

1. *States in 2023, by Race*, Statista (2024).

2. <https://www.statista.com/statistics/639685/us-home-ownership-rate-by-race/>.

3. Cottage clusters provide a relatively affordable form of detached housing that  
4. makes the community more accessible to these groups.

### 6. **E. LUBA's Jurisdiction**

7. Respondent's final decision is the approval of the Ordinance, adopting  
8. amendments to land use regulations. Therefore, the Respondent's decision is a  
9. "Land use decision" as defined in ORS 197.015(10)(a)(A)(iii). As such,  
10. LUBA has jurisdiction to review the Ordinance. ORS 197.825(1).

## 12. **III. ARGUMENTS**

### 13. **A. First Assignment of Error – The Ordinance does not comply with** 14. **the Respondents' mandate to affirmatively further fair housing in its** 15. **housing production strategy as required by Goal 10 and ORS 197A.100.**

16. The duty to affirmatively further fair housing in Oregon's housing  
17. production strategy was introduced in HB 2001(2023) as requiring cities to  
18. take "meaningful actions that, when taken together, address significant  
19. disparities in housing needs and access to opportunity and replace segregated  
20. living patterns with truly integrated and balanced living patterns to transform  
21. racially and ethnically concentrated areas of poverty into areas of opportunity  
22. and foster and maintain compliance with civil rights and fair housing laws."  
23. ORS 197A.100(9).

24. This long definition warrants breaking down into its component parts to  
25. determine whether a land use decision that affects housing production  
26. strategies meets the goal of AFFH. An action, when taken into the context of



the city's other housing production actions and land use decisions, must: (1) Address significant disparities in housing needs, (2) address significant disparities in access to opportunity, and (3) replace segregated living patterns with truly integrated and balance living patterns. The objective of these actions is to transform racially and ethnically concentrated areas of poverty into areas of opportunity, and to foster and maintain compliance with civil rights and fair housing laws.

The Ordinance does not address significant disparities in housing needs. By limiting the types of middle housing allowed in the Overlay Zone, Respondent is continuing a trend of avoiding the need for affordable, detached middle housing.

By segregating the majority of cottage cluster development to the under-serviced East Happy Valley, Respondent is creating a greater disparity in access to opportunity based on income and geographic location.

By creating a literal north-to-south boundary line to indicate the side of the "tracks," (i.e., *that* part of the city) where cottage cluster development should be concentrated, coupled with the relative lack of buildable lands in the non-exclusionary areas or West Happy Valley, Respondent is reenforcing traditional patterns of segregation rather than truly integrating their community.

These actions, when taken together, are more likely to create a racially and ethnically concentrated area of poverty in East Happy Valley where a more diverse housing choice will lead to greater diversity in incomes, family types, and racial demographics. The city's interest in maintaining the neighborhood character of the Bowl and other high-opportunity areas of the city will result in the concentration of poverty in low-opportunity areas of the city.

1.           *Preservation of Error*

2.           When a legislative land use decision is the subject of an appeal, the issue  
3. does not need to have been initially raised at the local level. *Columbia Pacific*  
4. *v. City of Portland*, 76 Or LUBA 15 (2017); *DLCD v. Columbia County*, 24 Or  
5. LUBA 32 (1992). *Roads End Sanitary District v. City of Lincoln City*, 48 Or  
6. LUBA 126 (2004). *Opus Development Corp. v. City of Eugene*, 28 Or LUBA  
7. 670 (1995).

8.           Nonetheless, Petitioner preserved the first assignment of error in the  
9. HLA Written Testimony, stating that the Amendments failed to comply with  
10. Respondent’s “obligation to affirmatively further fair housing”. Rec. 79-80.

12.           *Standard of Review*

13.           LUBA's standard of review is defined in ORS 197.835. The following  
14. subsections are applicable in this proceeding:

15.           (7) The board shall reverse or remand an amendment to a land use  
16. regulation or the adoption of a new land use regulation if: \* \* \* \*

17.           (a) The regulation is not in compliance with the comprehensive plan; or  
18.           (b) The comprehensive plan does not contain specific policies or other  
19. provisions which provide the basis for the regulation, and the regulation  
20. is not in compliance with the statewide planning goals.

21.           (8) The board shall reverse or remand a decision involving the application  
22. of a plan or land use regulation provision if the decision is not in  
23. compliance with applicable provisions of the comprehensive plan or land  
24. 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 \* \* \* \*

(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."

The Amendments amend an acknowledged local land use regulations and therefore must be consistent with applicable state statutes, land use goals and their implementing regulations, and the Respondent's acknowledged comprehensive plan. ORS 195.025(1) and (2)(a); ORS 197.646; Statewide Planning goal 2; *ODOT v. Douglas County*, 157 Or App 18, 21, 967 P2d 901 (1998). The Respondent bears the burden of demonstrating said compliance. *Yamhill County v. LCDC*, 115 Or App 468, 471-472, 839 P2d 238 (1992).

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*

1. *Hillsboro*, 61 Or LUBA 375 (2010). LUBA is to reverse a decision if it is  
2. prohibited as a matter of law. OAR 661-010-0071(1)(c).

3. *Goal 10 Requires Cities to Affirmatively Further Fair Housing.*

4. Local comprehensive plans must be consistent with the statewide  
5. planning goals. OAR 660-015-0000(2). Goal 10 requires that cities should  
6. provide a housing supply that “meets community needs [by offering] people a  
7. range of different places to live, different community densities to choose from,  
8. and does not overburden the financial resources of any group living there.”  
9. Oregon Department of Land Conservation and development, *Goal 10:*  
10. *Housing*. <https://www.oregon.gov/lcd/OP/Pages/Goal-10.aspx> (provides  
11. context to Goal 10 from relevant state agency). These requirements of Goal 10  
12. are part and parcel with the AFFH goals of ending segregated living patterns  
13. (i.e. giving people a range of options for places to live and community densities  
14. to choose from), and transforming areas of poverty into areas of opportunity  
15. (i.e. not overburdening the financial resources of any group living there).

16. Additionally, the regulatory interpretation of Goal 10 indicates that a  
17. housing production strategy report under Goal 10 must explain how the City’s  
18. housing production strategy affirmatively furthers fair housing. OAR 660-008-  
19. 0050. While this case is not about the Respondent’s Housing Production  
20. Strategy Report, this requirement makes it clear that AFFH is an essential  
21. component to Goal 10 conformance, such that a land use decision that does not  
22. affirmatively further fair housing is not in conformance with Goal 10.

23. Having established the integral relationship between Goal 10 and AFFH,  
24. it can fairly be stated that to the extent the Respondent did not affirmatively  
25.  
26.

1. further fair housing in the challenged decision, they are not in conformance  
2. with Goal 10.

3.  
4.           4.           *The Ordinance does not affirmatively further fair housing*  
5.           *because it restricts rather than expands housing choice.*

6.           Expanding housing choice is a recurring theme in Goal 10 and Oregon's  
7. laws regarding urbanization and housing production strategies. Because AFFH  
8. is a requirement in all aspects of a housing production strategy, it is necessary  
9. to address how the restriction of housing choice in West Happy Valley fails to  
10. conform with the goal of AFFH.

11.           Land use decisions related to housing production must affirmatively  
12. further fair housing in a way that creates more housing choice. *See* ORS  
13. 197A.100(3)(e) and (f). This is an express goal of the Oregon's housing  
14. production strategy Housing Needs Analysis and is a necessary consideration  
15. in housing production strategies as to whether a land use decision affirmatively  
16. furthers fair housing. The Ordinance is directly adverse to the objective of  
17. addressing housing needs in Happy Valley.

18.           Respondent suggests in their findings in support of the Ordinance that,  
19. because the existing minority population in Happy Valley is more affluent than  
20. the statewide median income for their demographic indicates, their housing  
21. choice will not be significantly impacted by the prohibition of cottage clusters  
22. in the overlay zone. Rec. 109 This entirely ignores the purpose of diversifying  
23. housing choice, which is that *all* Oregonians should be able to find affordable  
24. housing in the community of their choice. *See* ORS 197A.025(1)(a)

25.           "In adopting rules under ORS chapter 197A and statewide planning  
26. goals relating to housing or urbanization, or administering the rules or

1. statutes, the Land Conservation and Development Commission and  
2. Department of Land Conservation and Development shall be guided  
3. by the [principle that] Housing that is safe, accessible and affordable  
4. in the community of their choice should be available to  
5. every Oregonian.” [emphasis added]

6. While the rules under this section do not exist yet, the intention that  
7. housing production should affirmatively further fair housing is clear.  
8. Respondent should not be permitted to make a land use decision affecting  
9. their housing production that are adverse to statewide urbanization and  
10. housing production guidelines.

11. The city’s position is essentially that so long as a housing consumer is  
12. affluent enough to afford living in the overlay zone, the city’s decision to limit  
13. the development of cottage clusters will not affect them. It ignores that its duty  
14. under ORS 197A.100 is to increase housing choice and diversity. The  
15. possibility that failing to increase housing choice and diversity will not have a  
16. significant impact on current residents is an insufficient finding on its own.  
17. Fair housing rights are not afforded solely to the most affluent members of the  
18. community. The city’s duty is also not limited to existing residents but  
19. extends to all Oregonians that would choose to live in Happy Valley as their  
20. community of choice but for the lack of housing choice and affordability.  
21. ORS 197A.100(3)(f)(B).

22. Local governments are required to provide sufficient findings and  
23. accessible material to demonstrate compliance with statewide goals and  
24. comprehensive plans. *See Barnes v. City of Hillsboro*, 61 Or LUBA 375, 378  
25. (2010) (failure to develop adequate findings warrants remand). Respondent’s  
26.



findings fail to meet this standard by ignoring the disparities in housing choice and access to opportunity created by the ordinance.

Restricting cottage clusters in the overlay zone, in the most direct way possible, limits housing choice for families that wish to live in that community. It excludes a form of detached middle housing that meets the needs of housing consumers that may need or desire detached housing, but who cannot afford single family detached housing in the high-opportunity areas of Happy Valley. As a result of this direct restriction on housing choice in the overlay zone, the Respondent's decision is adverse to their mandate to affirmatively further fair housing.

5. *The Ordinance limits access to opportunities for families that would benefit from living in cottage cluster housing.*

AFFH requires cities to take meaningful actions under their housing production strategy that, in pertinent part "address significant disparities in...access to opportunity." ORS 197A.100(9). The Ordinance would concentrate cottage cluster development in low-opportunity areas of the city.

"Access to opportunity" is not defined by Oregon statute, but federal regulations clarifies that "access to opportunity" includes equitable access to good schools, family-supporting jobs, transportation infrastructure, healthcare, and a safe and healthy environments. *See* 24 CFR § 5.151.

Respondent claims in their findings that geographic segregation of cottage cluster development to East Happy Valley will provide "opportunities to better accommodate the additional dwellings with more planned utility and transportation infrastructure and better access to public transit." Rec. 106. This neglects the current lack of opportunities in East Happy Valley and relies

entirely upon the aspirational development of future resources in an area that is currently opportunity and resource poor. These aspirations for future opportunities in East Happy Valley are not coupled with any commitments to develop resources or opportunities and are therefore insufficient findings to show that the city considered access to opportunity in its decision.

West Happy Valley, where most of the exclusionary zone lies, has good schools, access to grocery stores, and access to infrastructure. Rec. 79.

Excluding cottage cluster development where ample access to opportunities already exists, in the hopes that East Happy Valley will magically transform from a resource desert into an area of opportunity, does not address significant disparities in access to opportunities.

Certainly as the population in East Happy Valley grows, more opportunities will follow, but the same can be said of West Happy Valley and thus the Respondent fails to address the creation of a disparity of opportunities created by the Ordinance. Respondent's express goal "to preserve the existing character of an older portion of the city" (Rec. 10) means affirmatively excluding affordable housing types from affluent areas in order to concentrate lower barrier housing and diversity in East Happy Valley. It is thus intended to *preserve* existing disparities in access to opportunity.

Local governments are required to provide sufficient findings and accessible material to demonstrate compliance with statewide goals and comprehensive plans. *See Barnes v. City of Hillsboro*, 61 Or LUBA 375, 378 (2010) (failure to develop adequate findings warrants remand). Speculation on future conditions does not give rise to the findings that the Ordinance will address disparities in access to opportunities. The Ordinance would not provide families in newly developed cottage clusters with the same access to

1. opportunity enjoyed by the more affluent residents in West Happy Valley. The  
2. Ordinance does not conform with AFFH or Goal 10.

3.  
4.           6.           *Concentrating cottage cluster development in East Happy*  
5.                           *Valley reinforces segregated living patterns.*

6.           The Ordinance is contrary to the AFFH mandate of “replac[ing]  
7. segregated living patterns with truly integrated and balanced living patterns”  
8. because it bolsters geographic segregation based on economic status. ORS  
9. 197A.100(9).

10.           The express purpose of limiting cottage clusters in the overlay zone is  
11. “to preserve the existing character of an older portion of the city” commonly  
12. referred to as “The Bowl”. The Bowl accounts for much of West Happy Valley,  
13. and while the city’s original goal was to prevent the development of cottage  
14. clusters throughout West Happy Valley, that was not possible while complying  
15. with the performance metric requirement to allow cottage clusters on 70% of  
16. buildable lands zoned for residential use city wide. Rec. 150-151. Respondent  
17. therefore focused on preventing cottage cluster development in The Bowl, but  
18. most of the land allowing the development of cottage clusters remains in the  
19. underdeveloped East Happy Valley. Id.

20.           While zones exist in West Happy Valley that ostensibly allow for cottage  
21. clusters, most have already been developed with single family detached  
22. housing. Underdeveloped portions of West Happy Valley, like those north of  
23. SE King Road or north of SE Idleman Road, would fall within the new  
24. exclusionary zone. The zone is cited to allow as little practical development  
25. opportunity for cottage clusters in West Happy Valley as possible. The lack of  
26.

practical development options for cottage clusters in West Happy Valley means that, while available zoning may exist in West Happy Valley, it is not *truly* integrated. Concentrating cottage cluster development in East Happy Valley creates a literal geographic imbalance of where affordable detached housing is built.

Because cottage clusters are a relatively affordable form of detached housing, they are especially attractive to elderly citizens, families with children, and persons with a disability—especially those priced out of detached single family housing. Among those groups priced out of single family detached housing, black and Hispanic Oregonians are overrepresented.

The creation of an overlay zone to exclude a certain middle housing type-and by extension the groups most likely to utilize that middle housing type-from West Happy Valley bolsters segregated living patterns, rather than replacing them with truly integrated and balanced living patterns. It does not conform with AFFH or Goal 10.

7. *The Ordinance fails to conform with with federal civil rights and fair housing laws.*

The Ordinance does not comply with ORS 197A.100(2)(d) and (3)(e) because it does not affirmatively further fair housing in that it does not “foster and maintain compliance with civil rights and fair housing laws.” ORS 197A.100(9).

Title V of the civil rights act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program receiving federal financial assistance. 42 USC § 2000d. This effort to confer nondiscriminatory

1. duties on non-federal entities means that federal grant recipients must not  
2. discriminate in their policies, practices, or services. There are virtually no local  
3. governments that do not receive federal support in some respect.

4. HUD regulations go further than Title V, and require fund recipients to  
5. certify compliance with AFFH obligations. 24 CFR § 91.255. Fund recipients,  
6. like municipal governments, must identify barriers to fair housing choice and  
7. set measurable goals to address those barriers. *Id.* For reasons described in  
8. previous sections, the challenge decision does not affirmatively further fair  
9. housing and would not conform with federal civil rights and fair housing laws  
10. requiring AFFH. Because it fails to comply with federal AFFH requirements, it  
11. also falls short of the state AFFH requirement. *See also* 24 CFR § 5.150 *et seq.*  
12.

13. **B. Second Assignment of Error: The Ordinance does not consider**  
14. **the regional housing needs.**

15. 1. *Preservation of Error*

16. When a legislative land use decision is the subject of an appeal, the issue  
17. does not need to have been initially raised at the local level. *Columbia Pacific*  
18. *v. City of Portland*, 76 Or LUBA 15 (2017); *DLCD v. Columbia County*, 24 Or  
19. LUBA 32 (1992). *Roads End Sanitary District v. City of Lincoln City*, 48 Or  
20. LUBA 126 (2004). *Opus Development Corp. v. City of Eugene*, 28 Or LUBA  
21. 670 (1995).

22. Nonetheless, Petitioner preserved the first assignment of error in the HLA  
23. Written Testimony, stating that the Amendments failed to comply with  
24. Respondent’s “obligation to affirmatively further fair housing”. Rec. 79-80.

25. /////

26. /////

2. *Standard of Review*

LUBA's standard of review is defined in 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; or

(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.

(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the 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 \* \* \* \*

(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."

The Amendments amend an acknowledged local land use regulations and therefore must be consistent with applicable state statutes, land use goals and their implementing regulations, and the Respondent's acknowledged comprehensive plan. ORS 195.025(1) and (2)(a); ORS 197.646; Statewide



1. Planning goal 2; *ODOT v. Douglas County*, 157 Or App 18, 21, 967 P2d 901  
2. (1998). The Respondent bears the burden of demonstrating said compliance.  
3. *Yamhill County v. LCDC*, 115 Or App 468, 471-472, 839 P2d 238 (1992).

4. LUBA affords no deference to local interpretations of state law. *Kenagy*  
5. *v. Benton County*, 115 Or App 131, 134, 838 P2d 1076, rev den, 315 Or 271  
6. (1992). The deference to interpretations of local ordinances by local governing  
7. bodies under ORS 197.829 "does not apply to enactments by local  
8. governments of local plan and land use regulations." *Downtown Community*  
9. *Assoc. v. City of Portland*, 32 Or LUBA 1, 8 (1996).

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

15. 3. *Respondents did not provide anything in the way of findings to*  
16. *indicate they considered regional housing needs.*

17. The Ordinance does not comply with statewide land use laws because  
18. Respondent does not provide anything in the way of findings to indicate they  
19. considered regional housing needs. Oregon's land use goals require  
20. cooperation such that municipalities are not sloughing their responsibilities  
21. onto surrounding jurisdictions.

22. Local governments are required to consider the needs of their region in  
23. arriving at a fair allocation of housing types and densities. OAR  
24. 660-008-0030(1). Respondent has done a regional analysis, but there is no  
25. indication in the findings that the regional analysis was consulted in reaching  
26. the challenged decision.

1. In their staff report, Respondent addresses their citywide housing goal  
2. of providing for the housing needs of the citizens of the state. Rec. 121. While  
3. this objective is commensurate with the duty to consider regional housing  
4. needs, Respondent did no such thing in reaching its findings. The Report  
5. indicates:

6. “The areas where cottage cluster opportunities will expand are  
7. throughout the city including opportunities in East Happy Valley,  
8. which is where the City determined cottage cluster development is  
9. most appropriate and compatible with surrounding areas. In  
10. addition, cottage clusters can help support the City’s goals for  
11. providing housing options that are more affordable and accessible  
12. for a range of the community’s households, including senior  
13. residents, young people, and families.”

14. Id. The report does not address the impact of excluding cottage clusters  
15. from West Happy Valley on regional housing needs, and there is no  
16. indication that regional housing needs were considered in passing the  
17. Ordinance. In fact, because of its proximity to the economically and  
18. racially diverse areas of Southeast Portland and the I-205 corridor,  
19. excluding cottage clusters in West Happy Valley will effectively offload that  
20. the burden of creating housing diversity onto its neighboring jurisdictions.

21. Additionally, concentrating denser housing development like  
22. cottage clusters in East Happy Valley—remote from the services and  
23. opportunities concentrated in West Happy Valley—may only serve to  
24. overburden smaller communities to the east, like Damascus, as their  
25. resources are more accessible in terms of relative distance to the far-flung  
26. parts of East Happy Valley.

1. Because the Ordinance did not consider regional housing needs,  
2. and in fact may be detrimental to surrounding jurisdictions, it violates  
3. Oregon's land use laws and must be reversed.

4. *4. Failure to consider regional housing needs is a further*  
5. *failure to affirmatively further fair housing because it reinforces*  
6. *traditional patterns of segregation.*

7. Housing discrimination and segregation is a regional issue  
8. requiring a regional response. Because Respondent spurned their duty to  
9. consider regional housing needs in reaching the challenged Decision, they  
10. likewise failed to consider how the decision reinforced traditional patterns of  
11. segregation. *See* ORS 197A.100(9).

12. Happy Valley is an affluent city with a median household income in  
13. 2020 of \$125,000. Rec. 184. That is 35% higher than the median income in  
14. Clackamas County, and more than twice the statewide median income. *Id.*  
15. Happy Valley has a poverty rate of only 3%, compared to 9% in Clackamas  
16. County and far below the statewide rate of 17%. Rec 452. The accentuates the  
17. regional disparity in wealth and underscored the need for a diversity in  
18. affordable housing options in Happy Vally's pocket of affluence. The city's  
19. Housing Needs Analysis does not provide or consider any comparable  
20. poverty data for neighboring jurisdictions in Multnomah County or the  
21. greater Metro area, a startling deficiency for a city in a metro region.

22. Happy valley does not even house its own workforce, allocating that  
23. duty to surrounding jurisdictions. According to Happy Vally's Housing Needs  
24. Analysis, only 250 residents of Happy Valley work in Happy Valley. Rec.  
25. 452-453. A remaining 3,820 commute into the city to work. *Id.*  
26.

1. The necessary consequence of concentrating wealth in one  
2. locality is to concentrate poverty elsewhere. By limiting housing choice  
3. and affordability provided by housing clusters in West Happy Valley,  
4. Happy Valley allocates the burden of addressing poverty and expanding  
5. diversity to surrounding jurisdictions. This reallocation of poverty and  
6. housing diversity to surrounding jurisdictions reinforces traditional  
7. patterns of segregation, and therefore fails the requirements of both OAR  
8. 660-008-0030(1) and AFFH.

#### 10. IV. CONCLUSION

11. The Ordinance is contrary to and in opposition to the mandate to  
12. affirmatively further fair housing because it limits housing choice, creates and  
13. aggravates economic disparity, and bolsters segregated living practices. Staff  
14. findings do not adequately consider the goals of AFFH in reaching the  
15. challenged decision, and to in so doing so fail comply with Goal 10.  
16. Respondent also provide insufficient findings to show that they considered  
17. regional housing needs, and in effect are reinforcing traditional patterns of  
18. segregation. While the “performance metric” standard for citing middle  
19. housing under ORS 197A.420 and OAR 660-046-0205(3)(b) ostensibly allows  
20. for cities to limit cottage cluster development to 70% of lots or parcels, it was  
21. never intended as a means of circumventing Respondent’s duty to  
22. affirmatively further fair housing. Because this land use decision is in violation  
23. of statewide land use planning goals, this Court must reverse the decision.  
24. OAR 661-010-0071(1)(c).

1. **Dated December 23, 2024**

2. **FAIR HOUSING COUNCIL**  
3. **OF OREGON**

4. 

5. Steven M. Crawford, OSB No. 176264  
6. 1221 SW Yamhill St. #305  
7. Portland, OR 97205  
8. 503.223.8197 ex 112  
9. [scrawford@fhco.org](mailto:scrawford@fhco.org)

10. **CERTIFICATE OF COMPLIANCE**

11. I certify that the foregoing *Petition for Review* complies with the  
12. specifications outlined in OAR 661-010-0030(2).

13. I further certify that the word count of this *Petition for Review* meets the  
14. requirements of 11,000 word count requirement of OAR 661-010-0030(2)(b)  
15. because it has a final word count of 8735 words, not including the table of  
16. contents, table of authorities, or appendices.

17. I further certify that the foregoing *Petition for Review* meets the  
18. requirements of OAR 661-010-0030(2) because the font is no smaller than 14  
19. points.

20. I further certify that included with this *Petition for Review* is a copy of the  
21. challenged decision, including any adopted findings of fact and conclusions of  
22. law, as required by OAR 661-010-0030(4)(e).

23. December 23, 2024

24. 

25. Steven M. Crawford, OSB No. 176264  
26. 1221 SW Yamhill St. #305  
Portland, OR 97205  
503.223.8197 ex 112  
[scrawford@fhco.org](mailto:scrawford@fhco.org)

1.

2. **CERTIFICATE OF FILING AND SERVICE**

3.

4. I certify that on December 23, 2024, I filed the foregoing *Petition for*  
5. *Review* with the Land Use Board of Appeals by delivery via First Class Mail  
6. Certified Mail to the following address:

7. Land Use Board of Appeals  
8. 201 High St. SE, Suite 600  
9. Salem Oregon, 97301-3398

10. I further certify that I contemporaneously served the following parties or  
11. their attorneys with true and accurate copies of the foregoing *Petition for Review*  
12. by by delivery via First Class Certified Mail to the following addresses:

13. Attorneys for Respondent  
14. Christiopher D. Crean  
15. Beery Elsner & Hammond, LLP  
16. 1804 NE 45<sup>th</sup> Ave.  
17. Portland, OR 97213-1614

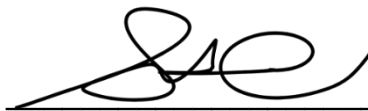
18. Courtesy copy to chris.crean@behlaw.com

19. Attorneys for Petitioner Housing Land Advocates  
20. Margaret Y. Gander-Vo  
21. Saalfeld Griggs, PC  
22. 250 Church St. SE, Ste. 200  
23. Salem, OR 97301

24. Courtesy copy to margaret@sglaw.com

25. December 23, 2024

26.



Steven M. Crawford, OSB No. 176264  
1221 SW Yamhill St. #305  
Portland, OR 97205  
503.223.8197 ex 112  
scrawford@fhco.org



**CITY OF HAPPY VALLEY  
ORDINANCE 589**

**AN ORDINANCE AMENDING TITLE 16 LAND DEVELOPMENT CODE OF THE  
HAPPY VALLEY MUNICIPAL CODE FOR IMPLEMENTATION OF COTTAGE  
CLUSTER REGULATIONS AND DECLARING AN EMERGENCY**

WHEREAS, cottage clusters are a group of several modest-sized homes around a courtyard; and

WHEREAS, per House Bill 2001, cottage clusters are an allowed use on residential lots which allow a single-family dwelling; and

WHEREAS, local jurisdictions may modify where cottage clusters are allowed and the City Council directed staff to implement the Performance Metric Approach and goal protected areas as defined in State law; and

WHEREAS, the proposed amendments to the Land Development Code are intended to preserve the existing character of an older portion of the city and improve opportunities for cottage clusters to the locations of the city with lower environmental impacts, superior infrastructure, and better access to transit; and

WHEREAS, the proposed amendments prohibit cottage clusters in some locations and reduce the minimum lot size, minimum lot width, minimum lot depth, and minimum lot frontage for lots for other lots; and

WHEREAS, the proposed amendments increase the number of buildable lots that can feasibly construct a cottage clusters citywide by nearly 42%; and

WHEREAS, the proposed amendments were created with input from the community including a public notice and a series of public meetings with the Planning Commission or City Council; and

WHEREAS, the Planning Commission held a public hearing on September 10, 2024 and recommended adoption of the proposed Legislative amendments to the City Council; and

WHEREAS, the City Council held a public hearing on September 17, 2024 concluding that the proposed amendments comply with the applicable criteria for Legislative approval as discussed in the Staff Report and Findings for File No. LU-0014-2024.

**NOW THEREFORE, THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:**

- Section 1. The City of Happy Valley declares that the Land Development Code is amended as set forth within Exhibit A of the Staff Report dated September 17, 2024, and are fully incorporated herein.
- Section 2. The City of Happy Valley declares that the Findings of Fact included within the Staff Report dated September 17, 2024, are hereby adopted in conjunction with this Ordinance to explain how the proposed amendments to the Land Development Code comply with applicable law and justify the approval.
- Section 3. That an emergency is declared to exist and as provided by Section 17 of the Happy Valley City Charter this ordinance takes effect on September 17, 2024.

The City Council of the City of Happy Valley approved Ordinance 589 on the 17th day of September, 2024.

*Tom Ellis*

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Tom Ellis  
Mayor

ATTEST:

*Kara Kerpan*

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Kara Kerpan  
City Recorder

## Proposed Code Amendments

Amended language indicated by **bold underline** and ~~strikethrough~~ text.

### Chapter 16.22 Residential Land Use Districts

#### 16.22.020 Very Low Density Residential Zones

**Table 16.22.020-1 Very Low Density Residential (R-40, R-20, R-15) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

Land Use	R-40	R-20	R-15
<b>Residential</b>			
One single-family dwelling, townhome, duplex, triplex, quadplex, cottage cluster, modular dwelling unit or manufactured home per lot <sup>1,2</sup>	P	P	P
Multiple-family units or manufactured housing, approved as part of a PUD application pursuant to Section 16.63.130	P	P	P
Accessory dwelling units complying with Section 16.44.050	P	P	P
Temporary manufactured home to allow for care of an aged or infirmed relative, provided that adequate water, sewage, disposal and fire protection are available, and that tongue, undercarriage and axles remain intact on the unit. Undercarriage wheels and supporting base must be covered with a full ground length sign-obscuring skirting around the entire circumference of the manufactured home.	C	C	C
Residential care home	P	P	P
Residential care facilities	C	C	C
Home occupation as defined in Section 16.12.030, per the provisions of Section 16.69.020	P	P	P
Rooming houses	X	X	X
<b>Commercial</b>			
Commercial daycare facilities	C	C	C
Special event centers for hosting functions such as weddings, anniversary celebrations, corporate parties and similar events	C	C	C
<b>Institutional/Utilities</b>			
Public and semi-public buildings and functions	C	C	C
Public utility substations or other function	C	C	C
Cemeteries	C	C	C
Church, synagogue, temple or other place of worship	C	C	C
Public or private school(s)	C	C	C
<b>Other</b>			
Agriculture and related activities, not to include the commercial processing of any type of agricultural products, whether animal or vegetable	P	P	P
Public or private open spaces, parks and playgrounds, tennis courts and similar outdoor recreational activity areas and recreational buildings, facilities and	P	P	P

**Table 16.22.020-1 Very Low Density Residential (R-40, R-20, R-15) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

Land Use	R-40	R-20	R-15
grounds, which include fully or partially enclosed structures for the primary or secondary use			
Large scale recreational facilities such as golf courses, aquatic centers, aquariums, amusement parks and similar uses	C	C	C
Temporary use of a trailer, mobile home, or other building for a use incidental to construction work provided that:	C	C	C
The maximum time period is six months, with a maximum extension for another six months;			
The trailer, mobile home, or other building is connected to an approved sewage disposal system;			
A building permit for a permanent structure has been issued;			
The temporary home or building shall be removed upon completion or abandonment of construction; and			
No reasonable alternative, such as the availability of nearby rental housing exists.			
Wireless communication facilities, not to include antenna support structures, subject to the provisions of Section 16.44.020 of this title	C	C	C
Construction of new streets and roads, including the extensions of existing streets and roads, that are included with the adopted transportation system plan	P	P	P
Helipad	C	C	C
Any accessory structure which is customarily incidental to any of the permitted uses, located on the same lot	P	P	P

**NOTES:**

<sup>1</sup> Applies to a parent lot. Duplexes, triplexes, quadplexes, and cottage clusters are not permitted on a child lot (i.e., previously subdivided lot from a middle housing land division).

<sup>2</sup> **Cottage clusters are not permitted within the Flood Management Overlay Zone (Chapter 16.35) or on any property within the Cottage Cluster Limitation Overlay Zone (Chapter 16.38).**

[...]

C. Development Standards. The development standards in Table 16.22.020-2 apply to all uses, structures, buildings, and development in the R-40, R-20 and R-15 Districts.

**Table 16.22.020-2 Development Standards for R-40, R-20, R-15**

Standard	R-40	R-20	R-15
Lot size (minimum and maximum density): Single-family detached, duplex, triplex, quadplex, <del>cottage cluster</del> <sup>1,6</sup>	40,000 sq. ft.	20,000 sq. ft.	15,000 sq. ft.
Lot size (minimum): Townhome <sup>1</sup>	1,500 sq. ft.	1,500 sq. ft.	1,500 sq. ft.
<b>Lot size (minimum): Cottage cluster<sup>1,6</sup></b>	<b>9,500 sq. ft.</b>	<b>7,000 sq. ft.</b>	<b>5,000 sq. ft.</b>

**Table 16.22.020-2 Development Standards for R-40, R-20, R-15**

<b>Standard</b>	<b>R-40</b>	<b>R-20</b>	<b>R-15</b>
Townhome maximum density (units per net acre)	4.4 du/net acre	8.7 du/net acre	11.6 du/net acre
Lot width (minimum) <sup>2,6</sup>	100 feet	80 feet	70 feet
<b>Cottage cluster lot width (minimum)<sup>6</sup></b>	<b>60 feet</b>	<b>50 feet</b>	<b>40 feet</b>
Lot depth (minimum)	200 feet	100 feet	90 feet
<b>Cottage cluster lot depth (minimum)<sup>6</sup></b>	<b>80 feet</b>	<b>70 feet</b>	<b>60 feet</b>
Street frontage (minimum)			
Lots fronting on cul-de-sac	70 feet	50 feet	50 feet
All other lots	100 feet	80 feet	60 feet
Townhomes	20 feet	20 feet	20 feet
<b>Cottage cluster</b>	<b>50 feet</b>	<b>50 feet</b>	<b>40 feet</b>
Lot coverage (maximum) <sup>3,6,7</sup>	20%	30%	35%
Building setbacks (minimum) <sup>6</sup>			
Front	22 feet	22 feet	22 feet
Rear	22 feet	22 feet	22 feet
Interior side	15/0 <sup>4</sup> feet	10/0 <sup>4</sup> feet	7/0 <sup>4</sup> feet
Street side (corner lot)	15 feet	15 feet	15 feet
Cottage cluster, front	10 feet	10 feet	10 feet
Cottage cluster, rear	10 feet	10 feet	10 feet
Cottage cluster, interior side	10 feet	10 feet	7 feet
Cottage cluster, street side	10 feet	10 feet	10 feet
Building height (maximum)	45 feet <sup>25</sup>		
<b>Building height (maximum): Cottage cluster</b>	<b>17 feet and one story</b>		
Shared outdoor recreation areas	400 sq. ft./unit provided in accordance with Section 16.42.080		

**NOTES:**

<sup>1</sup> Density calculations for single-family detached shall be made pursuant to Section 16.63.020(F). Cottage clusters must meet a minimum density of four units per gross acre.

<sup>2</sup> Townhomes are exempt from the lot width requirements.

<sup>3</sup> Cottage cluster housing is exempt from lot coverage requirements.

<sup>4</sup> Interior side yard setbacks for townhomes may be reduced to zero in compliance with applicable sections of the adopted Uniform Building Code.

<sup>5</sup> The single-family residential building height maximum is 45 feet at the front elevation; side and rear elevations may not exceed 49 feet.

<sup>6</sup> If a duplex, triplex, fourplex, or cottage cluster has been divided by a middle housing land division, per LDC 16.61, the development standards that are applicable to the lot shall apply to the middle housing parent lot, not to the middle housing child lot.

<sup>7</sup> Maximum lot coverage for townhomes is the greater of the percentage identified in the table or up to 1,000 square feet of buildings, decks, stairways and entry bridges that are more than 30 inches above grade (excluding eaves). Compliance with all other standards is required.

#### 16.22.030 Low Density Residential Zones

**Table 16.22.030-1 Low Density Residential (R-10, R-8.5, R-7) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

<b>Land Use</b>	<b>R-10</b>	<b>R-8.5</b>	<b>R-7</b>
<b>Residential</b>			
One single-family dwelling, townhome, duplex, triplex, quadplex, cottage cluster, modular dwelling unit or manufactured home per lot <sup>1,3</sup>	P	P	P
Multiple-family units or manufactured housing, approved as part of a PUD application pursuant to Section 16.63.130	P	P	P
Multifamily dwellings not approved as a PUD. Density calculation as defined in Section 16.63.020 may be used where applicable	X	X	X
Accessory dwelling units complying with Section 16.44.050	P	P	P
Temporary manufactured home to allow for care of an aged or infirmed relative, provided that adequate water, sewage, disposal and fire protection are available, and that tongue, undercarriage and axles remain intact on the unit. Undercarriage wheels and supporting base must be covered with a full ground length sign-obscuring skirting around the entire circumference of the manufactured home.	C	C	C
Residential care home	P	P	P
Residential care facilities	C	C	C
Rooming houses	X	X	X
Manufactured home parks, subject to the provisions of Section 16.44.040	P	P	P
Home occupation as defined in Section 16.12.030, per the provisions of Section 16.69.020	P	P	P
<b>Commercial</b>			
Commercial daycare facilities	C	C	C
Special event centers for hosting functions such as weddings, anniversary celebrations, corporate parties and similar events	C	C	C
<b>Institutional/Utilities</b>			
Public utility substations or other function	C	C	C
Church, synagogue, temple or other place of worship	C	C	C
Public or private school(s)	C	C	C
<b>Other</b>			
Public or private open spaces, parks and playgrounds, golf courses, tennis courts and similar outdoor recreational activity areas and recreational buildings, facilities and grounds, which include fully or partially enclosed structures for the primary or secondary use	P	P	P
Large scale recreational facilities such as golf courses, aquatic centers, aquariums, amusement parks and similar uses	C	C	C
Temporary use of a trailer, mobile home, or other building for a use incidental to construction work provided that: The maximum time period is six months, with a maximum extension for another six months; The trailer, mobile home, or other building is connected to an approved sewage	C	C	C



**Table 16.22.030-1 Low Density Residential (R-10, R-8.5, R-7) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

<b>Land Use</b>	<b>R-10</b>	<b>R-8.5</b>	<b>R-7</b>
disposal system;			
A building permit for a permanent structure has been issued;			
The temporary home or building shall be removed upon completion or abandonment of construction; and			
No reasonable alternative, such as the availability of nearby rental housing exists.			
Wireless communication facilities, not to include antenna support structures, subject to the provisions of Section 16.44.020 of this title	C	C	C
Helipad <sup>2</sup>	C	C	C
Construction of new streets and roads, including the extensions of existing streets and roads, that are included with the adopted transportation system plan	P	P	P
Any accessory structure which is customarily incidental to any of the permitted uses, located on the same lot	P	P	P

**NOTES:**

<sup>1</sup> Applies to a parent lot. Duplexes, triplexes, quadplexes, and cottage clusters are not permitted on a child lot (i.e., previously subdivided lot from a middle housing land division).

<sup>2</sup> Subject to applicable FAA rules and regulations.

<sup>3</sup> **Cottage clusters are not permitted within the Flood Management Overlay Zone (Chapter 16.35) or on any property within the Cottage Cluster Limitation Overlay Zone (Chapter 16.38).**

[...]

**Table 16.22.030-2 Development Standards for R-10, R-8.5 and R-7**

<b>Standard</b>	<b>R-10</b>	<b>R-8.5</b>	<b>R-7</b>
Lot size (minimum and maximum density): Single-family detached, duplex, triplex, quadplex, <del>cottage cluster</del> <sup>1,6</sup>	10,000 sq. ft.	8,500 sq. ft.	7,000 sq. ft.
Lot size (minimum): Townhome <sup>1</sup>	1,500 sq. ft.	1,500 sq. ft.	1,500 sq. ft.
<b>Cottage cluster<sup>1,6</sup></b>	<b>5,000 sq. ft.</b>	<b>5,000 sq. ft.</b>	<b>5,000 sq. ft.</b>
Townhome maximum density (units per net acre)	17.4 du/net acre	20.5 du/net acre	24.9 du/net acre
Lot width (minimum) <sup>2,6</sup>	60 feet	50 feet	50 feet
<b>Cottage cluster lot width (minimum)<sup>6</sup></b>	<b>40 feet</b>	<b>40 feet</b>	<b>40 feet</b>
Lot depth (minimum)	80 feet	70 feet	70 feet
<b>Cottage cluster lot depth (minimum)<sup>6</sup></b>	<b>60 feet</b>	<b>60 feet</b>	<b>60 feet</b>
Street frontage (minimum) <sup>6</sup>			
Lots fronting on cul-de-sac	35 feet	35 feet	35 feet
All other lots	50 feet	50 feet	50 feet
Townhomes	20 feet	20 feet	20 feet
<b>Cottage cluster</b>	<b>40 feet</b>	<b>40 feet</b>	<b>40 feet</b>
Lot coverage (maximum) <sup>3,6,7</sup>			

**Table 16.22.030-2 Development Standards for R-10, R-8.5 and R-7**

Standard	R-10	R-8.5	R-7
Single-family detached, duplex, triplex, quadplex, townhome	40%	45%	50%
Building setbacks (minimum) <sup>6</sup>			
Front	22 feet	22 feet	22 feet
Rear	22 feet	22 feet	22 feet
Interior side	7/0 <sup>4</sup> feet	5/0 <sup>4</sup> feet	5/0 <sup>4</sup> feet
Garage and carport entrances	22 feet	22 feet	22 feet
Street side (corner lot)	15 feet	15 feet	15 feet
Cottage cluster units, rear	10 feet	10 feet	10 feet
Cottage clusters, side	7 feet	7 feet	7 feet
Building height (maximum)	45 feet <sup>25</sup>		
<b>Building height (maximum): Cottage cluster</b>	<b>17 feet and one story</b>		
Shared outdoor recreation areas	400 sq. ft./unit provided in accordance with Section 16.42.080		

**NOTES:**

<sup>1</sup> Density calculations for single-family detached shall be made pursuant to Section 16.63.020(F). Cottage clusters must meet a minimum density of four units per gross acre.

<sup>2</sup> Townhomes are exempt from the lot width requirements.

<sup>3</sup> Cottage clusters are exempt from lot coverage requirements.

<sup>4</sup> Interior side yard setbacks for townhomes may be reduced to zero in compliance with applicable sections of the adopted Uniform Building Code.

<sup>5</sup> The single-family residential building height maximum is 45 feet at the front elevation; side and rear elevations may not exceed 49 feet.

<sup>6</sup> If a duplex, triplex, fourplex, or cottage cluster has been divided by a middle housing land division, per LDC 16.61, the development standards that are applicable to the lot shall apply to the middle housing parent lot, not to the middle housing child lot.

<sup>7</sup> Maximum lot coverage for townhomes is the greater of the percentage identified in the table or up to 1,000 square feet of buildings, decks, stairways and entry bridges that are more than 30 inches above grade (excluding eaves). Compliance with all other standards is required.

**16.22.040 Medium Density Single-Family Residential Zones**

**Table 16.22.040-1 Medium Density Single-Family Residential (R-5 and MUR-S) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

Land Use	R-5	MUR-S
<b>Residential</b>		
One single-family dwelling, townhome, duplex, triplex, quadplex, cottage cluster, or modular dwelling unit per lot <sup>1,4</sup>	P	P

**Table 16.22.040-1 Medium Density Single-Family Residential (R-5 and MUR-S) Permitted Uses**
**P=Permitted; C=Conditional Use; X=Prohibited**

Land Use	R-5	MUR-S
Multiple-family units or manufactured housing, approved as part of a PUD application pursuant to Section 16.63.130. Density calculation as defined in Section 16.12.030 may be used where applicable.	P	P
Accessory dwelling units, complying with Section 16.44.050	P	P
Residential care home	P	P
Residential care facilities	C	C
Manufactured home parks subject to the provisions of Section 16.44.040	C	P
Rooming houses	X	X
<b>Commercial</b>		
Commercial daycare facilities	C	C
Home occupation as defined in Section 16.12.030, per the provisions of Section 16.69.020	P	P
Special event centers for hosting functions such as weddings, anniversary celebrations, corporate parties and similar events	C	C
<b>Neighborhood Commercial Uses</b>		
Coffee shops, cafés, sandwich shops and delicatessens, restaurants (no drive-through service allowed)	X	P <sup>2, 3</sup>
Florists	X	P <sup>2, 3</sup>
Grocery, food, specialty foods, and produce stores	X	P <sup>2, 3</sup>
Laundromats and dry cleaners	X	P <sup>2, 3</sup>
Personal services (e.g., barbershops, hair salons, spas)	X	P <sup>2, 3</sup>
Yogurt and ice cream stores	X	P <sup>2, 3</sup>
Video rental stores	X	P <sup>2, 3</sup>
Retail and service commercial uses similar to those above but not listed elsewhere in this section upon administrative determination through the design review process	X	P <sup>2, 3</sup>
<b>Institutional/Utilities</b>		
Church, synagogue, temple or other place of worship	C	C
Public or private school(s)	C	C
Utility facilities (telecommunication, pump stations, substations)	C	C
<b>Other</b>		
Public or private open spaces, parks and playgrounds, tennis courts, and similar outdoor recreational activity areas and recreational buildings, facilities and grounds, which include fully or partially enclosed structures for the primary or secondary use	P	P

**Table 16.22.040-1 Medium Density Single-Family Residential (R-5 and MUR-S) Permitted Uses**
**P=Permitted; C=Conditional Use; X=Prohibited**

Land Use	R-5	MUR-S
Large scale recreational facilities such as golf courses, aquatic centers, aquariums, amusement parks and similar uses	C	C
Wireless communications facilities not to include antenna support structures, subject to the provisions of Section 16.44.020 of this title	P/C	P/C
Helipad	X	X
Construction of new streets and roads including the extensions of existing streets and roads, that are included with the adopted transportation system plan	P	P
Any accessory structure, which is, customarily incidental to any of the permitted uses, located on the same lot	P	P
Uses similar to those upon administrative determination by the Planning Official	P/C	P/C

**NOTES:**
<sup>1</sup> Applies to a parent lot. Duplexes, triplexes, quadplexes, and cottage clusters are not permitted on a child lot (i.e., previously subdivided lot from a middle housing land division).

<sup>2</sup> Neighborhood commercial uses subject to the provisions of Section 16.44.080.

<sup>3</sup> Neighborhood commercial uses are permitted within the Happy Valley Town Center Plan Area.

<sup>4</sup> **Cottage clusters are not permitted within the Flood Management Overlay Zone (Chapter 16.35) or on any property within the Cottage Cluster Limitation Overlay Zone (Chapter 16.38).**

[...]

**Table 16.22.040-2 Development Standards for R-5 and MUR-S**

Standard	R-5	MUR-S
Lot size (minimum): Single-family dwelling detached, duplex, and triplex, and cottage cluster <sup>1,8</sup>	5,000 sf	5,000 sf
Lot size (minimum): Quadplex and cottage cluster <sup>8</sup>	7,000 sf	7,000 sf
Lot size (minimum) Townhome <sup>1</sup>	1,500 sf	1,500 sf
Townhome maximum density (units/net acre)	25 du/net acre	25 du/net acre
Residential density (minimum) <sup>1</sup>	None	6 du/net acre
Lot width (minimum) <sup>2</sup>	40 feet	Variable <sup>4</sup>
Lot depth (minimum)	60 feet	Variable <sup>4</sup>
Street frontage (minimum) <sup>8</sup>		
Lots fronting on cul-de-sac	35 feet	Variable <sup>4</sup>
All other lots	40 feet	Variable <sup>4</sup>
Townhomes	20 feet	20 feet
Lot coverage (maximum) <sup>5,8,9</sup>		

**Table 16.22.040-2 Development Standards for R-5 and MUR-S**

<b>Standard</b>	<b>R-5</b>	<b>MUR-S</b>
Single-family (detached)	50%	Variable <sup>4,6</sup>
Duplex, triplex, quadplex, townhome	60%	Variable <sup>4,6</sup>
Building setbacks (minimum) <sup>8</sup>		
Front (street access garage)	20 feet	20 feet
Front (alley access garage)	10 feet	10 feet <sup>4</sup>
Rear	20 feet	20 feet <sup>4</sup>
Interior side	5/0 feet <sup>3</sup>	5/0 feet <sup>3,4</sup>
Street side (corner lot)	8 feet	8 feet <sup>4</sup>
Cottage cluster, front	10 feet	10 feet
Cottage cluster, rear	10 feet	10 feet
Cottage cluster, interior side	5 feet	5 feet
Cottage cluster, street side	8 feet	8 feet
Garage and carport entrances		
Entrances not facing an alley	22 feet	22 feet <sup>4</sup>
Entrances facing an alley	22 feet to base floor (foundation only, not including posts or other support mechanisms) 6 feet to upper floors (wall face)	22 feet to base floor (foundation only, not including posts or other support mechanisms) 6 feet to upper floors (wall face) <sup>4</sup>
Building height (maximum)	45 feet <sup>6</sup>	65 feet <sup>6</sup>
<b><u>Building height (maximum): Cottage cluster</u></b>	<b><u>17 feet and one story</u></b>	
Shared outdoor recreation areas	400 sq. ft./unit provided in accordance with Section 16.42.080	

**NOTES:**

<sup>1</sup> Density calculations for single-family detached shall be made pursuant to Section 16.63.020(F). Cottage clusters must meet a minimum density of four units per gross acre.

<sup>2</sup> Townhomes are exempt from the lot width requirements. Street frontage controls lot width for townhomes.

<sup>3</sup> Interior side yard setbacks for townhomes may be reduced to zero in compliance with applicable sections of the adopted Uniform Building Code.

<sup>4</sup> Standards may be proposed for amendment by Master Plan, PUD or Design Review land use applications.

<sup>5</sup> Cottage cluster housing is exempt from lot coverage requirements.

<sup>6</sup> Pursuant to Section 16.42.030, 20% of the net developable area must be usable open space.

<sup>7</sup> The single-family residential building height maximum is 45 feet at the front elevation; side and rear elevations may not exceed 49 feet.

<sup>8</sup> If a duplex, triplex, fourplex, or cottage cluster has been divided by a middle housing land division, per LDC 16.61, the development standards that are applicable to the lot shall apply to the middle housing parent lot, not to the middle housing child lot.

<sup>9</sup> Maximum lot coverage for townhomes is the greater of the percentage identified in the table or up to 1,000 square feet of buildings, decks, stairways and entry bridges that are more than 30 inches above grade (excluding eaves). Compliance with all other standards is required.

## 16.22.050 High Density Attached Residential

**Table 16.22.050-1 High Density Attached Residential (SFA, MUR-A, VTH)  
Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

Land Use	SFA	MUR-A	VTH
<b>Residential</b>			
Single-family detached dwellings (existing)	P	P	P <sup>1</sup>
Single-family detached dwellings (new)	X	X <sup>8</sup>	X
Single-family attached dwellings (townhouses, rowhouses)	P	P	P
Two-family dwelling (duplex)	P	P	P
Three-family dwelling (triplex)	P	P	P
Four-family dwelling (quadplex)	P	P	P
Cottage cluster dwellings	X	P <sup>9</sup>	X
Multifamily dwellings containing five or more dwelling units or condominiums	X	X	X
Senior housing, congregate housing or nursing homes	X	P	X
Rooming houses	X	X	X
Accessory dwelling units (per Section 16.44.050)	P	P	P <sup>2</sup>
Home occupation (per Section 16.69.020)	P	P	P <sup>3</sup>
Bed and breakfast residencies	C	C	C
Rental information offices	P	P	P <sup>3</sup>
<b>Neighborhood Commercial Uses</b>			
Coffee shops, cafés, sandwich shops and delicatessens, restaurants (no drive through service allowed)	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X
Florists	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X
Grocery, food, specialty foods, and produce stores	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X
Laundromats and dry cleaners	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X
Personal services (e.g., barbershops, hair salons, spas)	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X
Yogurt and ice cream stores	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X
Video rental stores	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X

**Table 16.22.050-1 High Density Attached Residential (SFA, MUR-A, VTH)  
Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

<b>Land Use</b>	<b>SFA</b>	<b>MUR-A</b>	<b>VTH</b>
Retail and service commercial uses similar to those above but not listed elsewhere in this section upon administrative determination through the design review process	P <sup>4, 7</sup>	P <sup>4, 7</sup>	X
<b>Commercial—Offices</b>			
Professional and administrative offices	C <sup>4</sup>	C <sup>4</sup>	X
Medical and dental office, clinics and laboratories	C <sup>4</sup>	C <sup>4</sup>	X
<b>Institutional/Utilities</b>			
Churches, synagogues, temples or places of worship	C	C	C <sup>5</sup>
Private and public schools	C	C	C
Commercial daycare facilities	C	C	C
Utility facilities (telecommunication, pump stations, substations, utility carrier cabinets)	C	C	C
<b>Other</b>			
Public or private open spaces, parks and playgrounds, tennis courts and similar outdoor recreational activity areas and recreational buildings, facilities and grounds, which include fully or partially enclosed structures for the primary or secondary use	P	P	P <sup>6</sup>
New streets and roads, including the extensions of existing streets and roads, that are included with the adopted transportation system plan	P	P	P
Wireless telecommunication facilities	P/C	P/C	P
Uses and structures customarily accessory and incidental to a primary use	P	P	P <sup>3</sup>
Temporary storage of recyclables/reuseables: The temporary storage within an enclosed structure of source-separated recyclable/reusable materials generated and/or used on-site prior to on-site reuse or removal by the generator or licensed or franchised collector to a user or broker	P	P	P <sup>3</sup>
Temporary buildings for uses incidental to construction work subject to the provisions of Section 16.69.010—Such buildings shall be removed upon completion or abandonment of the construction work	P	P	P <sup>3</sup>
Bus shelters, bicycle facilities, street furniture, drinking fountains, kiosks, art works and other pedestrian and transit amenities	P	P	P <sup>3</sup>
Helipad	X	X	X
Uses similar to those upon administrative determination by the Planning Official	P/C	P/C	P/C

**NOTES:**

<sup>1</sup> Preexisting single-family dwellings and residential homes may be altered or expanded.

<sup>2</sup> Residential care homes/facilities, duplexes, triplexes, quadplexes, cottage clusters, and accessory dwellings are exempt from the density standards. Townhouses have a maximum density of 25 units/acre.



**Table 16.22.050-1 High Density Attached Residential (SFA, MUR-A, VTH) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

Land Use	SFA	MUR-A	VTH
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<sup>3</sup> Permitted only as an accessory use.

<sup>4</sup> Neighborhood commercial use subject to the provisions of Section 16.44.080.

<sup>5</sup> Alteration or expansion of a religious facility which was lawfully established prior to July 1, 1993. The use shall not extend beyond the property which was under the ownership of, or occupied by, the preexisting religious facility and associated facilities prior to July 1, 1993.

<sup>6</sup> Public parks, playgrounds, recreational and community buildings and grounds, tennis courts, and similar recreational uses, all of a noncommercial nature, are permitted; provided that any principal building or swimming pool shall be located a minimum of 30 feet from any other lot in a residential district.

<sup>7</sup> Neighborhood commercial uses are permitted within the Happy Valley Town Center Plan Area.

<sup>8</sup> Single-family detached units with a maximum floor area of 2,000 square feet are permitted in the MUR-A zone within the Happy Valley Town Center Plan Area.

<sup>9</sup> **Cottage clusters are not permitted within the Flood Management Overlay Zone (Chapter 16.35) or on any property within the Cottage Cluster Limitation Overlay Zone (Chapter 16.38).**

[...]

**Table 16.22.050-2 Development Standards for SFA, MUR-A and VTH Districts**

Standard	SFA	MUR-A	VTH
Residential density (maximum) <sup>1</sup>	15 du/net acre <sup>2</sup>	15 du/net acre <sup>2</sup>	2,000 sf/primary unit <sup>9</sup>
Residential density (minimum) <sup>1</sup>	10 du/net acre <sup>2</sup>	10 du/net acre	3,000 sf/primary unit <sup>9</sup>
Lot size (minimum)	2,000 sf	3,000 sf <sup>9</sup>	2,000 sf
Lot width (minimum)	None	None	None
Lot depth (minimum)	None	None	None
Lot coverage (maximum)	75% <sup>12</sup>	75% <sup>12</sup>	65%
Lot landscaping (minimum)	15% <sup>7</sup>	15% <sup>7</sup>	25%
Setbacks (minimum):			
Front	10 feet <sup>3</sup>	10 feet <sup>3</sup>	10 feet <sup>10,11</sup>
Rear	15 feet <sup>3,4</sup>	15 feet <sup>3,4</sup>	15 feet <sup>10,11</sup>
Interior side	5 feet <sup>3,4,5</sup>	5 feet <sup>3,4,5</sup>	5 feet <sup>5,10</sup>
Street side	8 feet <sup>3</sup>	8 feet <sup>3</sup>	5 feet <sup>10,11</sup>
Cottage cluster, rear		10 feet	
Garage and carport entrances			
Entrances not facing an alley	22 feet	22 feet	22 feet <sup>10</sup>
Entrances facing an alley	22 feet to base floor (foundation only,	22 feet to base floor (foundation only, not	22 feet to base floor (foundation only, not including posts or other

**Table 16.22.050-2 Development Standards for SFA, MUR-A and VTH Districts**

<b>Standard</b>	<b>SFA</b>	<b>MUR-A</b>	<b>VTH</b>
	not including posts or other support mechanisms) 6 feet to upper floors (wall face)	including posts or other support mechanisms) 6 feet to upper floors (wall face)	support mechanisms) 6 feet to upper floors (wall face) <sup>10</sup>
Between groupings of residential buildings on the same lot	10 feet	10 feet	10 feet
Setback (maximum from street right-of-way or designated accessway)	None	None	18 feet
Building height (maximum)	45 feet <sup>8</sup>	65 feet <sup>8</sup>	35 feet
<b>Building height (maximum): Cottage cluster</b>	<b><u>17 feet and one story</u></b>		
Shared outdoor recreation areas	400 sq. ft./unit provided in accordance with Section 16.42.080		

**NOTES:**

<sup>1</sup> Density calculations shall be made pursuant to Section 16.63.020(F). Cottage clusters must meet a minimum density of four units per gross acre.

<sup>2</sup> Residential care homes/facilities, duplexes, triplexes, quadplexes, cottage clusters, and accessory dwellings are exempt from the density standards. Townhouses may have a maximum density of 25 units/acre.

<sup>3</sup> The minimum front, rear, side and street side building setbacks for public and institutional uses in the SFA district is 20 feet. Cottage clusters shall have a perimeter setback of 10 feet in the MUR-A zone.

<sup>4</sup> Where the SFA district abuts lower density residential districts, the abutting yards shall have a 10-foot landscaped buffer area.

<sup>5</sup> Side yard building setbacks for attached single-family (townhouse) may be reduced to zero in compliance with applicable sections of the adopted Uniform Building Code.

<sup>7</sup> Pursuant to Section 16.42.030, 20% of the gross developable area of the greater development project must be usable open space—the 15% landscaping standard is applicable to individual lots.

<sup>8</sup> Maximum building height for single-family detached/attached is 45 feet at the front elevation; side and rear elevations may not exceed 49 feet in height.

<sup>9</sup> Each lot for an attached single-family (townhouse) dwelling in the SFA and VTH zones shall have a minimum size of 2,000 square feet and a maximum size of 3,000 square feet, or each lot shall have a minimum size of 2,000 square feet and the average size of all lots shall not exceed 2,500 square feet. Each lot for a townhouse in the MUR-A zone shall have a minimum size of 1,500 square feet and no maximum lot size. Lots created for congregate care facilities, two- and three-family dwellings, or multifamily dwellings are not subject to minimum, maximum, or average lot size standards. However, the density provisions of Section 1012 are applicable. A new lot created for a preexisting single-family dwelling shall have a minimum lot size of 3,000 square feet, and a maximum lot size of 5,000 square feet. A lot created for a preexisting dwelling shall not be included in the gross site area used to determine the maximum density for the remaining lot.

<sup>10</sup> Preexisting dwellings and their accessory structures shall comply with the Clackamas County VR-4/5 setback standards.

Table 16.22.050-2 Development Standards for SFA, MUR-A and VTH Districts			
Standard	SFA	MUR-A	VTH

<sup>11</sup> On a corner lot, one of the required front yard building setbacks may be reduced to eight feet when abutting a local or connector street. Awnings, porches, bays, and overhangs may extend up to four feet into this setback.

<sup>12</sup> Lot coverage maximum for existing, or where allowed, proposed single-family detached units is 50%. Maximum lot coverage does not apply to cottage clusters.

Chapter 16.35 Flood Management Overlay Zone

[...]  
16.35.030 Permitted Uses

[...]  
C. Prohibited Uses.

[...]  
**3. Cottage clusters.**

Chapter 16.38 Cottage Cluster Limitation Overlay Zone

16.38.010 Purpose

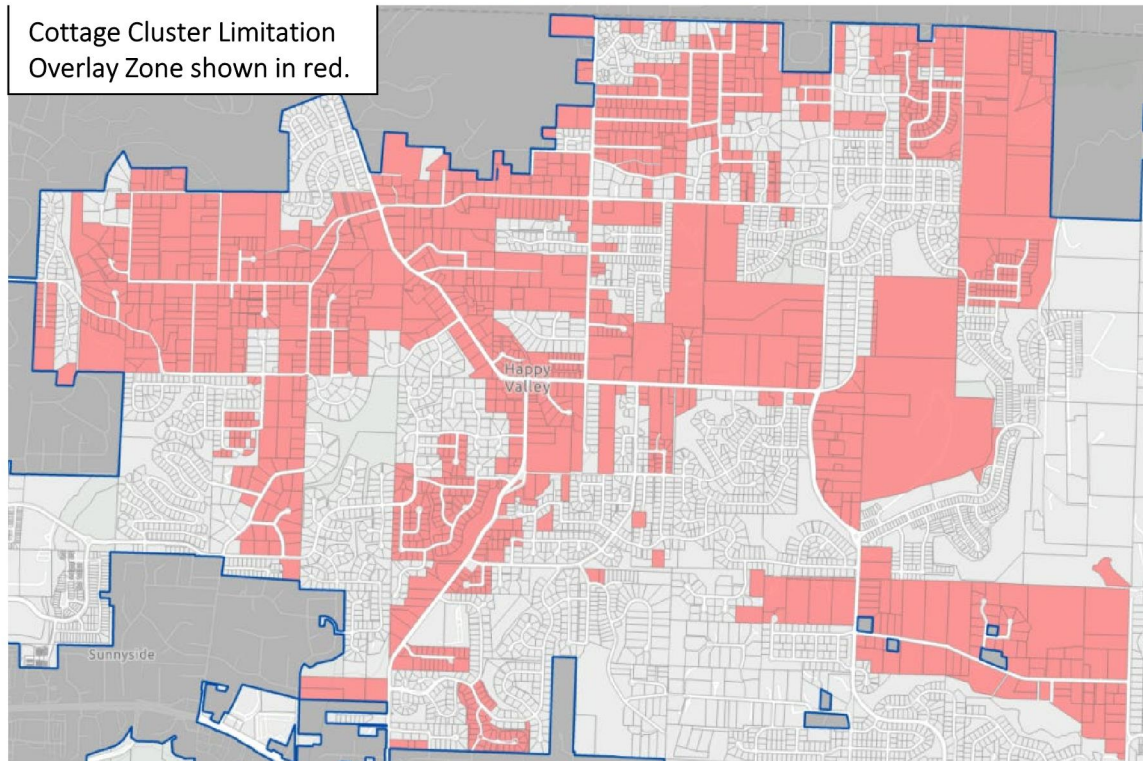
**The purpose of the Cottage Cluster Limitation Overlay Zone (CCLOZ) is to preserve existing neighborhood character in select areas of Happy Valley by prohibiting cottage cluster development. This zone provides an alternative path to comply with the state middle housing requirements in OAR 660-046-0205(3).**

16.38.020 Requirements and Applicability

- A. Cottage clusters are not allowed on any property within the CCLOZ after September 17, 2024.**
- B. The CCLOZ applies to all properties within the area shown on Figure 16.38.020-1.**

- C. Development within the overlay is subject to other applicable regulations of the Happy Valley Development Code. Where a conflict between regulations exists, the CCLOZ regulations supersede. Where the regulations of the Natural Resource Overlay zone and/or Steep Slopes Overlay Zone and/or Flood Management Overlay apply, those regulations supersede the CCLOZ regulations.**

Figure 16.38.020- 1



**Mayor**  
Honorable Tom Ellis



**City Manager**  
Jason A. Tuck, ICMA-CM

**CITY OF HAPPY VALLEY  
STAFF REPORT TO THE CITY COUNCIL**

**September 17, 2024**

**LAND DEVELOPMENT CODE AMENDMENTS FOR COMPLIANCE WITH OAR 660-046-0205(3) (PERFORMANCE METRIC APPROACH), OAR 660-046-0205(2) and OAR 660-046-0010(3) (GOAL PROTECTED APPROACH), INCLUDING CHANGES TO LOT SIZE, LOT WIDTH, LOT DEPTH AND LOT FRONTAGE, AND CLARIFICATIONS TO MAXIMUM BUILDING HEIGHT AND NUMBER OF STORIES FOR IMPLEMENTING COTTAGE CLUSTER REQUIREMENTS.**

**FILE NO. LU-0014-2024**

**I. GENERAL INFORMATION:**

**APPLICABLE CRITERIA:**

- Applicable Statewide Planning Goals: 1, 2, 5, 7, and 10
- Oregon Administrative Rules
- Titles 1, 7, and 8 of Metro Chapter 3.07 (Urban Growth Management Functional Plan)
- Applicable Goals and Policies from the City of Happy Valley Comprehensive Plan
- Applicable Sections of Title 16 (Land Development Code) of the City of Happy Valley Municipal Code, including Chapter 16.22 (Residential Land Use Districts), Chapter 16.35 (Flood Management Overlay Zone), Section 16.61.050 (Type IV procedure - legislative) and Chapter 16.67 (Comprehensive Plan Map, Specific Area Plans, Land Use District Map and Text Amendments)

**EXHIBITS:**

- A. Proposed Code Amendments
- B. Performance Metric Analysis
- C. Performance Metric Methods
- D. Cottage Cluster Goal Protection Options
- E. Buildable Lands Inventory (2020)
- F. Housing Capacity Analysis (City limits, 2020)
- G. Pleasant Valley/North Carver Housing Needs Analysis (2020)
- H. Metro's 2023 Compliance Report

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*Preserving and enhancing the safety, livability and character of our community*

- I. Public Comments
- J. Clackamas River Water (CRW) Comments
- K. Oregon Department of Land Conservation and Development (DLCD) Comments
- L. Ordinance 589
- M. Happy Valley Performance Metric Analysis methodology and results
- N. Race/ethnicity and Income Maps (Census Block and Tract Data)

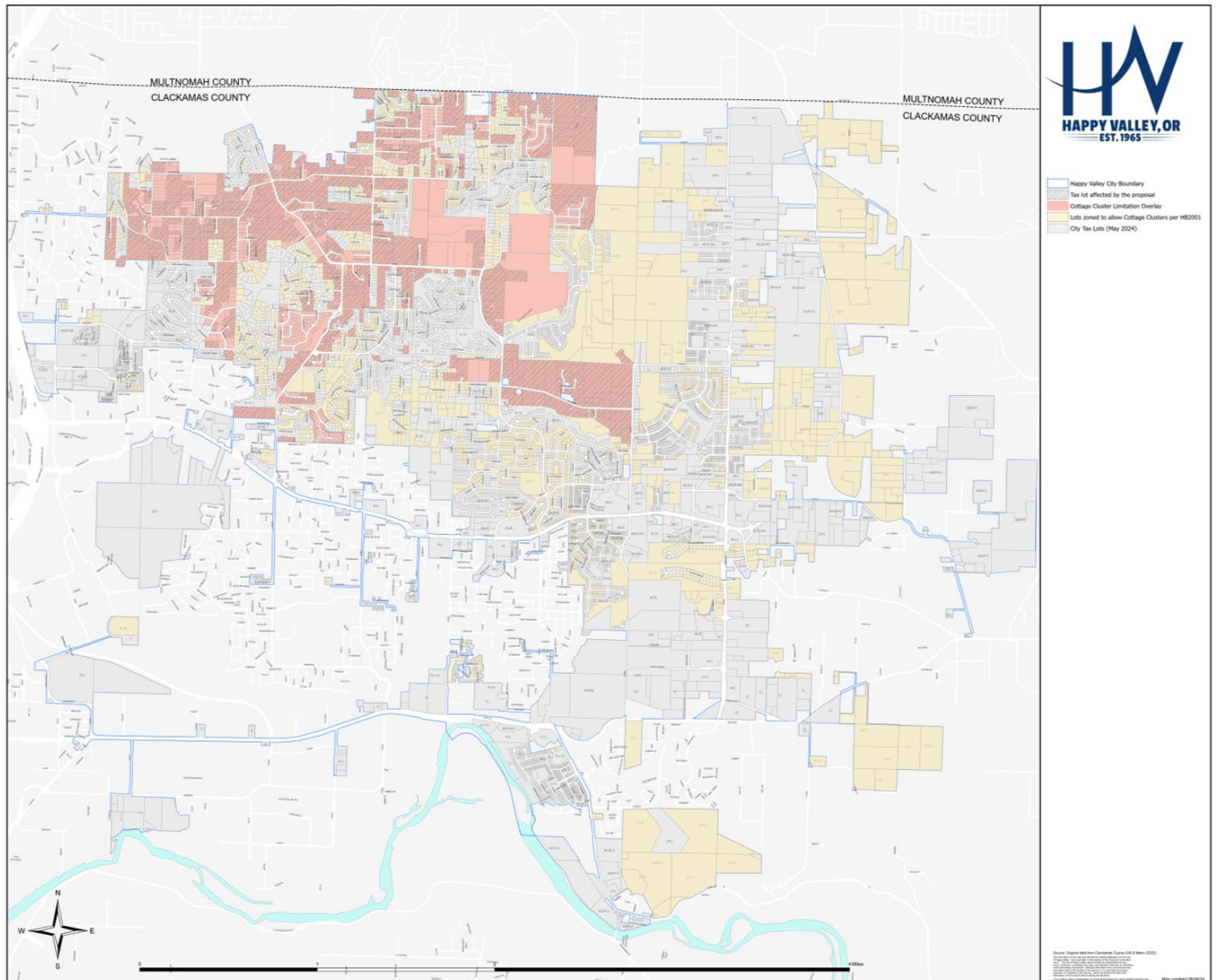
**BACKGROUND:**

The proposed amendments preserve the existing character of an older portion of the city and improve opportunities for cottage clusters to the locations of the city with lower environmental impacts, superior infrastructure, and better access to transit. The Happy Valley City Council has held several work sessions regarding cottage clusters and directed staff to implement the Performance Metric Approach and goal protected areas as defined in State law.

The Performance Metric Approach offers an alternative path for allowing cottage clusters in all residential areas that allow single-family detached housing, per OAR 660-046-0205(3). The proposed Land Development Code (LDC) amendments are intended to ensure that cottage clusters can feasibly be constructed on 70% of lots zoned to allow single-family detached housing. This approach was chosen by the City to provide flexibility for where the City allows cottage clusters while still complying with state rules. These amendments will revise existing cottage cluster standards which were drafted to be consistent with safe harbor provisions of the middle housing administrative rules (OARs) and the state's Middle Housing Model Code. The new overlay district will prohibit cottage clusters in a more established portion of the city, while reducing the minimum lot size, lot width, and frontage requirements for cottage clusters outside of the overlay. As a result, the number of lots that can feasibly construct a cottage cluster will increase citywide by nearly 42% from 1,511 to 2,143. Cottage clusters will be allowed on 100% of single-family parcels outside of the overlay zone that have enough estimated buildable area (i.e., 5,000 square feet of non-goal-protected land) to accommodate a cottage cluster. Further, the overlay is mitigated to some extent because all the approved cottage clusters are located within the overlay, all other types of middle housing are allowed within the overlay, and the irregular shape of the overlay.



Cottage Cluster Limitation Overlay Zone (Shown in Pink)



The City Council also directed staff and consultants to regulate development of cottage clusters within goal-protected areas consistent with state rules and regulations. In response, the proposed LDC amendments will also prohibit cottage clusters in the Flood Management Overlay Zone (LDC Chapter 16.35) per the proposed amendments.

#### **PUBLIC INVOLVEMENT:**

A total of five City Council work sessions were held in 2023 and 2024 to discuss LDC updates to comply with the Performance Metric Approach and to prohibit cottage clusters within floodplain areas. The work



sessions were open to the public. Information associated with the work sessions was posted on the City's website and was available to community members on request. Further, the proposed amendments were emailed to agencies, posted on the City's website, and will be presented at public hearings before the Planning Commission and City Council. The community is invited to participate in writing or attend public hearings.

**AGENCY AND INTERESTED PERSONS COMMENTS:**

Notification and materials were delivered to DLCD the required 35 days prior to this initial evidentiary hearing. In addition, notice and materials were sent to the regional government (Metro) and other affected public and private agencies and service providers. A preliminary set of findings of compliance with applicable local and state requirements and approval criteria accompanied the notification materials. Staff notes that CRW's comments are attached as Exhibit J and DLCD's comments are attached as Exhibit K. Further discussion of the DLCD comments is explored, below.

**PUBLIC COMMENTS:**

The City received correspondence pertaining to the subject application (Exhibit I). These comments were mostly inquiries asking for more information and clarity about the application. These comments and the City's response to these comments are summarized below.

ChiEn Montero: Stated that the map is small and hard to read and therefore asked for a digital copy.

City response: Staff responded with a link to a page on the City's website that had a digital map.

Brian Bennett:

Stated that they live in the proposed Cottage Cluster Limitation Overlay Zone. They were unclear whether the proposed changes would allow or prohibit cottage clusters on their property and surrounding properties.

City response: Staff clarified that the City was proposing to prohibit cottage clusters in the overlay zone. Staff also provided a link to a page on the City's website that had a digital map.

Kimberly Schneider:

Stated that they have observed an increase in population and traffic since they moved to Happy Valley in 1983. They have concerns about vehicle speed and noise, and they do not want the City to allow higher density housing, such as cottage clusters.

City response: Staff clarified that the City was proposing to prohibit cottage clusters in the overlay zone, not allow them. Staff also provided a link to a page on the City's website that had a digital map.

Kathryn Lansing:

Inquired about whether their property was within the Cottage Cluster Limitation Overlay Zone. They also asked if there was more information on the City's website.

City response: Staff confirmed that their property was within the Cottage Cluster Limitation Overlay Zone. Staff also provided a link to a page on the City's website that had a digital map.

Nicole Anderson:

Expressed several concerns with the mailed notice. They could not find online materials, the map was too small to read, the language in the notice was vague, the City's social media accounts did not have

any information on the public hearing, the public notice was only available in English without a QR code option for translation, and the amount of time offered for public input was too short.

City response: Staff created a website to provide more information about the subject application and a map to help members of the community more easily find their property. The idea of providing a QR code option by which people can access materials in different languages is an innovative idea for public engagement that the City could consider in the future. The public notice document and timeframe met minimum state requirements for a mailed public notice of this type.

Mark Warner:

Inquired about the map and which lots were affected by the subject application and how they would be affected. They were particularly interested in whether it would result in higher taxes and why the boundary of the proposed Cottage Cluster Limitation Overlay Zone had an intermittent boundary.

City Response: Staff clarified the labeling on the map and which lots were subject to the proposal. Staff directed them to the Clackamas County Assessment and Taxation Department for any specific questions about taxes. Staff explained that the boundary was designed to result in the greatest preservation of existing housing types and neighborhood character within “the Bowl” (the geographic region east of Mt. Scott and west of Scouters Mountain).

#### **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT COMMENTS:**

Ethan Stuckmayer of DLCD submitted comments identifying that DLCD’s review of the proposal “concludes that the proposed amendments herein largely conform to the specific parameters outlined in Oregon Administrative Rule, Chapter 660, Division 046”. Additionally, the memorandum identified the following:

- A request for a technical memorandum documenting the details of the methodology used as well as answering specific questions.
- Request for findings to OAR 660-046-0205 (3)(b)(F).
- A note that the city will need to repeat this analysis at each subsequent Housing Capacity Analysis every six years to demonstrate continued compliance.
- Concern that the prohibition of cottage clusters conflicts with the legislative direction and principles provided to state and local governments in the implementation of Goal 10 will reinforce patterns of racial and economic segregation by foreclosing opportunity for more affordable housing options within the city, for both rental and ownership housing.
- The proposal creates risk of state intervention in the future, including the Housing Acceleration Program or the Governor’s Housing Production Framework.

City Response: Some additional findings were added to the staff report and a supplemental memorandum was added to the record prior to the Planning Commission hearing. These amendments will revise existing cottage cluster standards which were drafted to be consistent with safe harbor provisions of the middle housing administrative rules (OARs) and the state’s Middle Housing Model Code. The new overlay district will prohibit cottage clusters in a more established portion of the city, while reducing the minimum lot size, lot width, and frontage requirements for cottage clusters outside of the overlay. As a result, the number of lots that can feasibly construct a cottage cluster will increase citywide by nearly 42% from 1,511 to 2,143. Cottage clusters will be allowed on 100% of single-family parcels outside of the overlay zone that have enough estimated buildable area (i.e., 5,000 square feet of non-goal-protected land) to accommodate a cottage cluster. Further, the overlay is mitigated to some extent because all the existing approved cottage clusters are located within the overlay, all other types of middle housing are allowed within the overlay, and the irregular shape of the overlay.

### **PROPOSED AMENDMENTS:**

Adoption of amendments to the LDC to comply with OAR 660-046-0205(3) for cottage clusters and to prohibit cottage clusters in the Flood Management Overlay Zone.

- Establishment of an overlay district which prohibits new and expansions of existing cottage clusters.
- Reduction of the minimum lot size, lot width, lot depth, and lot frontage for cottage cluster lots outside the overlay district.
- Prohibiting cottage clusters within the Flood Management Overlay Zone.
- Clarifying existing standards for maximum height and number of stories for cottage clusters by including them within the development standards section of cottage cluster eligible zoning districts.

### **II. RECOMMENDATION**

Staff recommends that the City Council approve File No. LU-0014-2024.

### **III. FINDINGS OF FACT**

The following **Statewide Planning Goals** are applicable to the subject request:

*Goal 1 (Citizen Involvement). To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.*

#### **Staff Response:**

Goal 1 requires the City to employ an appropriately-scaled involvement program to ensure the opportunity for meaningful public involvement throughout the land use planning process. The Planning Commission provided input at their September 10, 2024, meeting. The City Council also provided input at a series of work sessions: September 5, 2023, February 20, 2024, March 5, 2024, June 4, 2024, and June 18, 2024. Each of the work sessions included a public notice of the agendas and agenda packets were available to the public via the City's website and upon request.

The proposed amendments have also been noticed to the community. Notice of the public hearings was sent to Metro and DLCD, posted in the paper, posted on the City's website, and mailed to property owners on the lots where cottage clusters are prohibited. The notices afford citizens the opportunity to submit comments, provide testimony, ask questions, receive answers, or challenge the proposed adoption and amendment. After a decision is rendered, an opportunity to request a review of the decision at the Land Use Board of Appeals is also an option for additional input on the project. The requirements of Goal 1 have been met.

*Goal 2 (Land Use Planning). To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to ensure an adequate factual base for such decisions and actions.*

#### **Staff Response:**

Goal 2 outlines the basic procedures of Oregon's statewide planning program, stating that land use decisions must be made in accordance with comprehensive plans and that effective implementation ordinances must be adopted. In the process of conducting the Performance Metric Analysis, the City examined the number of properties that are not overly constrained by

natural resources and determined the City's potential capacity for cottage cluster development under this alternative framework for complying with state rules for middle housing (i.e., HB 2001/OAR 660-046). The information contained within the Performance Metric Methodology and Analysis memos provides a factual basis that informs the draft LDC amendments for compliance with OAR 660-046-0205(3) as well as potential future amendments. The requirements of Goal 2 are met.

*Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces). To provide natural resources and conserve scenic and historic areas and open spaces.*

**Staff Response:**

Goal 5 requires the City to inventory, protect and conserve natural, scenic and historic resources within the City. The Performance Metric Analysis addresses areas that the City has identified as natural resources through its Goal 5 inventory, regional inventories of natural resources, and associated development code requirements intended to protect, conserve or minimize impacts to these resources. The analysis and draft amendments only consider properties that are not overly constrained by natural resources for cottage cluster development. Through this analysis process and continued implementation of the City's policies and standards associated with natural resource protection, the requirements of Goal 5 have been met. No changes are proposed to the regulation of Goal 5 resources as part of this set of LDC amendments.

*Goal 7 (Areas Subject to Natural Disasters and Hazards). To protect people and property from natural hazards.*

**Staff Response:**

Goal 7 requires that jurisdictions apply appropriate safeguards when planning development in areas that are subject to natural hazards such as flood hazards. Goal 7 requires the City to protect people and property. Similar to Goal 5 resources, the Performance Metric Analysis conducted for the draft amendments includes areas that the City, Metro region and state have identified as natural hazards through available hazards data and associated development code requirements intended to avoid impacts associated with those hazards. In Happy Valley, hazards are primarily related to Constraints including conservation slopes (greater than 25%), transition slopes (between 15% and 25%), natural resources (NROZ) and associated buffers, as well as floodplains. The Performance Metric Analysis considers these areas as "goal protected" and only assumes properties with at least 5,000 square feet of "non-goal protected" land are available for cottage cluster development. In addition, the draft amendments will prohibit cottage clusters in the Flood Management Overlay zone. The intent of prohibiting cottage clusters in these areas is to avoid exposing a larger number of people to risk of life and property, consistent with the intent of Goal 7. The City finds that its existing standards applied to areas with conservation slopes and transition slopes which apply to all housing types sufficiently protect people and property in these areas. As a result, no further restrictions to cottage clusters are proposed in those areas as part of this set of LDC amendments. Through this analysis process and continued implementation of the City's policies and standards associated with natural hazards protection, the requirements of Goal 7 have been met.

*Goal 10 (Housing). To provide for the housing needs of citizens of the state.*

**Staff Response:**

Goal 10 requires the City to maintain and plan for an adequate supply of land to accommodate at least 20 years of future growth, providing flexibility in housing location, type, and density to ensure the availability and prices of housing units are commensurate with the needs and financial capabilities of households. Comprehensive plans are required to include an analysis of local housing needs by type and affordability, an assessment of housing development potential, and an inventory of residential land; contain policies for residential development and supportive services based on that analysis that increase the likelihood that needed housing types will be developed; and provide for an adequate supply of a variety of housing types consistent with identified policies and meeting minimum density and housing mix requirements (established by OAR 660, Division 007).

The proposed amendments comply with the state’s Performance Metric Approach requirements and will support cottage cluster development in residential areas of the city outside of the proposed Cottage Cluster Limitation Overlay zone. The city currently has 2,691 properties that are zoned for cottage clusters and meet minimum lot size requirements and are not tracts of land or otherwise constrained from development. Ignoring the minimum lot size for cottage clusters, the City currently has 3,061 properties that are zoned for cottage clusters and have a minimum of 5,000 square feet of area that is non-Goal protected. The proposed amendments will reduce the number of lots that allow cottage clusters to 2,143 (70% of the 3,061 parcels that allow single-family detached and have a minimum of 5,000 square feet of non-Goal protected area). While these amendments will result in a reduction of about 548 parcels that allow cottage clusters citywide, the number of lots that are proposed to allow cottage clusters under the Performance Metric Approach (2,143) represents an increase of 632 lots from the current number of lots (1,511) that are zoned for cottage clusters, meet minimum lot size requirements and have a minimum of 5,000 square feet of area that is non-Goal protected. The number of parcels that will allow cottage clusters *outside* of the proposed Cottage Cluster Limitation overlay zone will increase by about 331 parcels and cottage clusters will be allowed on 100% of single-family parcels outside of the overlay zone that have enough estimated buildable area (i.e., 5,000 square feet of non-goal protected) to accommodate a cottage cluster. The increase in the number of parcels that will allow cottage clusters is a result of reducing minimum lot sizes, lot widths, lot depths, and frontages for cottage clusters in these areas, as shown in the table below. A significant portion of the areas that will be available for future cottage cluster development will be in East Happy Valley, which contains most of the City’s remaining buildable land and will have opportunities to better accommodate the additional dwellings with more planned utility and transportation infrastructure and better access to public transit.

Zones	Minimum Lot Size (Square Feet)	Minimum Lot Width (Feet)	Minimum Lot Depth (Feet)	Minimum Frontage (Feet)
MURA	No Change	No Change	No Change	No Change
MURS	<del>7,000</del> 5,000	No Change	No Change	No Change
R5	<del>7,000</del> 5,000	No Change	No Change	No Change
R7	<del>7,000</del> 5,000	<del>50</del> 40	<del>70</del> 60	<del>50/35</del> 40/35

R8.5	<del>8,500</del> 5,000	<del>50</del> 40	<del>70</del> 60	<del>50/35</del> 40/35
R10	<del>10,000</del> 5,000	<del>60</del> 40	<del>80</del> 60	<del>50/35</del> 40/35
R15	<del>15,000</del> 5,000	<del>70</del> 40	<del>90</del> 60	<del>60/50</del> 50
R20	<del>20,000</del> 7,000	<del>80</del> 50	<del>100</del> 70	<del>80/50</del> 50
R40	<del>40,000</del> 9,500	<del>100</del> 60	<del>200</del> 80	<del>100/70</del> 50

	<b>Total Buildable Cottage Cluster Lots</b> <i>Zoning + 5,000 Sq Ft Unconstrained</i>	<b>Current Lots that Allow Cottage Clusters</b> <i>Zoning + Min Lot Size</i>	<b>Current Lots that Allow Cottage Clusters that are Buildable (&gt;5k sf non-goal protected)</b> <i>Zoning + Min Lot Size + 5,000 Sq Ft Unconstrained</i>	<b>Lots that Allow Cottage Clusters with Performance Metric Approach</b>
In the Overlay	918 (30%)	879	577	0 (0%)
Not in the Overlay	2,143 (70%)	1,812	934	2,143 (100%)
<b>Total</b>	<b>3,061</b>	<b>2,691</b>	<b>1,511</b>	<b>2,143</b>

The City has worked extensively in recent years to promote housing options and production. Happy Valley has produced a significant amount of housing units recently, with 2,390 units delivered in the five-year period between Fiscal Year 2019-2020 and Fiscal Year 2023-2024. Of these units, a substantial number have been attached forms of housing, including townhomes, “plexes,” and apartments.

In February of 2022 the City adopted a citywide Housing Capacity Analysis (HCA) to understand the community’s 20-year housing needs and capacity. The HCA conducted in February 2020 for land within the city limits concluded there was a minor need for additional low-density housing.

**FIGURE 6.3: COMPARISON OF FORECASTED FUTURE LAND NEED (2040) WITH AVAILABLE CAPACITY**

WITHIN CITY LIMITS		SUPPLY			DEMAND		
Zone & Plan Category	Typical Housing Type	Buildable Land Inventory (Total)			Growth Rate (1.8%)		
		Developable Acres	Unit Capacity	Avg. Density (units/ac)	New Unit Need (2040)	Surplus or (Deficit)	
						Units	Acres
Low-Density	Single-family detached; Some SF attached & plex	362.9	1,164	3.2	2,014	(850)	(265)
Med-Density	SF attached; Manufact. home; 2-4 plexes	96.1	639	6.6	349	290	44
High-Density	Multi-family apartments	114.3	1,923	16.8	723	1,200	71
<b>TOTALS:</b>		<b>573.3</b>	<b>3,726</b>	<b>6.5</b>	<b>3,087</b>	<b>639</b>	<b>(150)</b>

Sources: Angelo Planning Group, Johnson Economics

The findings assume that under newly adopted state rules, 2% of available buildable parcels in the LDR zone will be used for the various types of attached units (single-family attached townhomes, duplex – fourplex). This amounted to 87 attached units and 1,927 detached units in the LDR zone.

In March of 2023 the City adopted a Housing Capacity Analysis for the Pleasant Valley/North Carver Comprehensive Plan. The study identified a need for 4,361 dwelling units between 2015 and 2040 though planned for 7,527 dwelling units including single-family detached units on a variety of lot sizes, attached units such as townhomes and duplexes, small scale multifamily units such as cottage clusters and courtyard apartments, and larger multifamily developments.

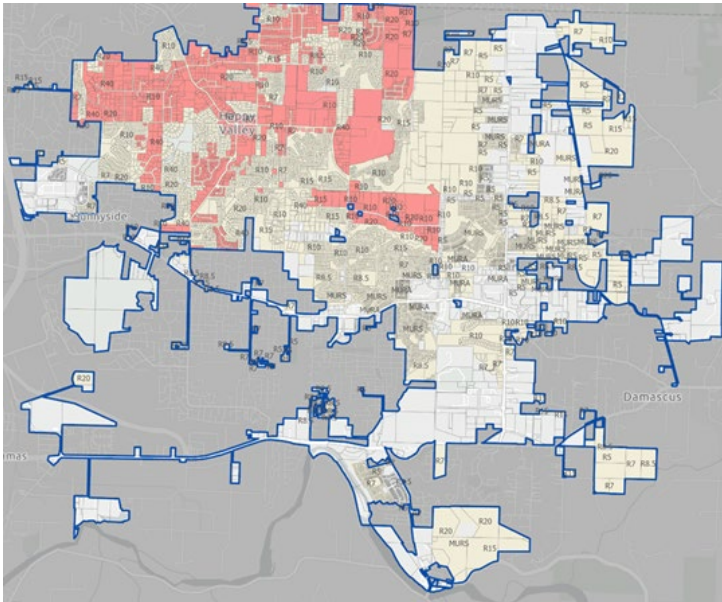
Overall, the recent HCAs found that the City has planned capacity for over 11,000 units over the next 20 years, which exceeds citywide need by about 3,805 units, or 51%. The surplus of unit capacity compensates for any potential reduction in unit capacity that may result from the proposed amendments for the Performance Metric approach (548 properties) and the goal protected lands (zero properties prohibited outright, but 43 acres of goal protected land removed from cottage cluster development eligibility). In addition, the majority of properties in these areas allow for other forms of middle housing and/or multi-unit housing, including duplexes, triplexes, quadplexes, townhomes and apartments. Apartments alone account for 846 of the 2,390 units (35.4%) approved for development during the five-year period between Fiscal Year 2019-2020 and Fiscal Year 2023-2024.

	<b>Dwelling Units Needed</b>	<b>Dwelling Units Planned For</b>	<b>Notes</b>
Citywide HCA	3,087	3,726	*Need 850 units of low density residential identified
PV/NC HCA	4,361	7,527	*More than filled the need identified in the citywide HCA.
<b>Total</b>	<b>7,448</b>	<b>11,253</b>	<b>3,805 (51%) Extra Units Above Need</b>

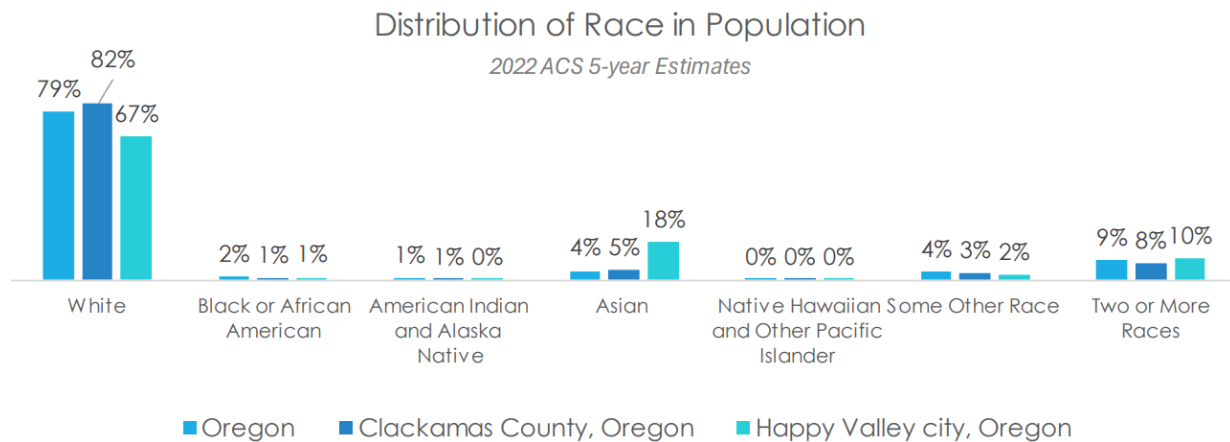
*\*Note some unurbanized properties with a County Zoning designation were within the City limits during the citywide HCA and are also within the PV/NC*

The shape of the overlay district is irregular, avoiding a single, large, contiguous area where cottage clusters are prohibited. Further, the City has approved two cottage cluster developments, both of which are located in the prohibited area. The prohibition overlay will still provide opportunities for residents to live in cottage clusters in addition to all other middle housing options. Prohibitions in this area will provide better opportunities for cottage clusters elsewhere in the city to support a particular type of housing choice in a wider geographic area while maintaining the existing supply of cottage clusters in the overlay.





The population of Happy Valley differs from that of other jurisdictions nearby. The City has a higher percentage of population that is not white compared to the county and state.



Further, non-white households in Happy Valley earn much higher incomes than their counterparts in other places. The non-white populations that are large enough to be represented in the data set are all within the middle – upper income. Latino or Hispanic households are estimated to earn a higher average income than non-Latino or Hispanic households. The higher incomes result in households which are more likely to afford a variety of housing types. Though the City supports the removal or reduction of barriers to housing for all our existing and future community members, given that all of the existing cottage clusters are within the proposed overlay, the irregular shape of the overlay proposed, and the higher income of non-white households, the increase on lots that could feasibly construct a cottage cluster by nearly 42%, the impact of the proposal on communities of color is not expected to be significant.

Median Household Income (MHI) by Race of Householder						
	Oregon		Clackamas County		Happy Valley	
	MHI	% of Households	MHI	% of Households	MHI	% of Households
White	\$ 77,627	83%	\$ 96,209	87%	\$ 124,360	74%
Black or African American	\$ 56,124	2%	\$ 75,407	1%	\$ 195,306	2%
American Indian and Alaska Native	\$ 60,194	1%	\$ 86,719	1%	X	0%
Asian	\$ 100,547	4%	\$ 113,243	4%	\$ 158,506	16%
Native Hawaiian and Other Pacific Islander	\$ 86,480	0%	\$ 108,278	0%	X	1%
Some other race	\$ 65,830	3%	\$ 69,410	2%	\$ 94,531	1%
Two or more races	\$ 69,351	7%	\$ 95,184	6%	\$ 115,536	6%
2022 ACS 5-year Estimates (Table S1903)						

Therefore, the requirements of Goal 10 have been met.

The following **Oregon Administrative Rules (OAR)** are applicable to the subject request:

#### OAR Chapter 660, Division 7 (Metropolitan Housing)

##### Staff Response:

Cities within the Portland Metropolitan region must comply with two requirements related to the capacity of buildable land. Both requirements are found in Oregon Administrative Rule (OAR) 660-007. The two rules state that:

- Jurisdictions other than small, developed cities must either designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing or justify an alternative percentage based on changing circumstances. (OAR 660-007-0030 (1)).
- The City of Happy Valley must provide for an overall density of six or more dwelling units per net buildable acre. (OAR 660-007-0035 (1)).

The proposed LDC amendments will not change the percentage of buildable land that allows attached single-family housing or multiple family housing. The City has implemented House Bill 2001 and every zoning designation that allows a single-family detached dwelling as a permitted use also identifies townhomes, duplexes, triplexes, and quadplexes as a permitted use and thus increased densities. The proposed amendments reduce the opportunities for cottage clusters minimally compared to the additional housing opportunities provided by HB 2001 as well as adoption of the Pleasant Valley / North Carver Comprehensive Plan. In addition, there are other lands in the East Happy Valley Comprehensive Plan area which have not annexed and thus are not accounted for in the above studies.

Therefore, these criteria have been satisfied.

**OAR Chapter 660, Division 46 Middle Housing in Medium and Large Cities**

**660-046-0010 Applicability**

*(3) A Medium or Large City may regulate Middle Housing to comply with protective measures (including plans, policies, and regulations) adopted and acknowledged pursuant to statewide land use planning goals. Where Medium and Large Cities have adopted, or shall adopt, regulations implementing the following statewide planning goals, the following provisions provide direction as to how those regulations shall be implemented in relation to Middle Housing, as required by this rule.*

[...]

*(c) Goal 7: Areas Subject to Natural Hazards – Pursuant to OAR 660-015-0000(7), Medium and Large Cities must adopt comprehensive plans (inventories, policies, and implementing measures) to reduce risk to people and property from natural hazards. Such protective measures adopted pursuant to Goal 7 apply to Middle Housing, including, but not limited to, restrictions on use, density, and occupancy in the following areas:*

*(A) Special Flood Hazard Areas as identified on the applicable Federal Emergency Management Agency Flood Insurance Rate Map; and*

**Staff Response:**

The City's Flood Management Overlay Zone (LDC Chapter 16.35) implements land use requirements intended to reduce the flood risk, prevent or reduce risk to human life or property, and maintain the function and values of floodplains. This overlay zone includes the Special Flood Hazard Area (SFHA), which includes the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency flood insurance maps.

The proposed LDC amendments will prohibit cottage clusters in the Flood Management Overlay Zone. These proposed LDC amendments are consistent with this OAR provision that allow local governments to adopt protective measures to restrict cottage clusters in the SFHA. In other words, the proposed amendments will be a restriction on a use (cottage clusters) in the SFHA. These measures will help the City reduce risks of potentially exposing a larger number of people through higher residential densities (4-8 cottage clusters) and occupancy associated with type of housing (relative to single family detached) in the Flood Management Overlay Zone. For more information, see Exhibit A (Performance Metric Code Amendments) and Exhibit D (Cottage Cluster Goal Protection Options).

Therefore, these criteria have been satisfied.

**660-046-0205 Applicability of Middle Housing in Large Cities**

*(3) A Large City may:*

*(b) Apply separate minimum lot size and maximum density provisions than what is provided in OAR 660-046-0220, provided that the applicable Middle Housing type other than Duplexes is allowed on the following percentage of Lots and Parcels zoned for residential use that allow for the development of detached single-family dwellings, excluding lands described in subsection (2):*

*(D) Cottage Clusters – Must be allowed on 70 percent of Lots or Parcels.*

**Staff Response:**

The "lands described in subsection (2)" refers to "Goal Protected" lands that implement Statewide Planning Goals 5 (Natural Resources), 6 (Air, Water, and Land Resources), and 7 (Areas Subject to Natural Hazards). Happy Valley implements each of the applicable Statewide Goal Protected areas through the following overlay zones:

- Habitat Conservation Areas (HCA) ([LDC Chapter 16.34](#)) – Goal 5/Title 13 Natural Resources
- Natural Resource Overlay Zone (NROZ) and Local Title 3 areas ([LDC Chapter 16.34](#)) – Goal 6/Title 3 Water Quality Protection
- FEMA 100 Year Floodplain ([LDC Chapter 16.35](#)) – Goal 7 Areas Subject to Natural Hazards
- Steep Slopes Development Overlay (SSDO) ([LDC Chapter 16.32](#)) – Goal 7 Areas Subject to Natural Hazards
  - Conservation Slopes (>25%, minimum 1,000 contiguous square feet) and
  - Transition Slopes (15%-25%, minimum 1,000 contiguous square feet)

The proposed amendments are intended to allow cottage clusters on 70% of lot or parcels that have enough space to reasonably accommodate a cottage cluster. In other words, cottage clusters must be allowed on 70% of lots or parcels that are not overly constrained by any of the types of Goal-Protected areas mentioned above. Therefore, the City needs to estimate the minimum feasible area for a single cottage cluster development, or the minimum “non-Goal-Protected” area. The City’s current cottage cluster development standards informed the following assumptions related to this assessment:

- Minimum four cottage units, maximum 900 square foot footprint: 3,600 square feet (LDC Section 16.44.130)
- Minimum 150 square feet of open space per unit: 600 square feet (LDC 16.44.130)
- Minimum four off-street parking spaces plus a drive aisle: 1,030 square feet (LDC Section 16.43.030)
- Minimum 10-foot setback for most zones and six feet of separation between each unit (LDC Chapter 16.22 and LDC Section 16.44.130)
- Pedestrian path and driveway dimensions (LDC Section 16.44.130 and LDC Section 16.43.030)

Based on the development and design standards listed above, staff estimates that the minimum developable, non-goal protected area for cottage clusters is 5,000 square feet. Given there is no minimum requirement for a cottage cluster unit’s building footprint, staff assumes that most developers would build close to the maximum footprint size based on site conditions. Further, the pedestrian path may be in the open space, and other overlapping dimensions exist. Therefore, it is reasonable to assume that the minimum feasible developable area to build a cottage cluster is approximately 5,000 square feet when accounting for possible ranges of building footprints and the other minimum dimensions. For the purposes of this analysis and the State’s interpretation of the rules, “developable area” is any area on a lot that is outside of a goal-protected area, regardless of whether the lot is currently vacant or developed. For more details on these assumptions and methods, see Exhibit C – Performance Metric Methods.

The proposed LDC amendments will prohibit cottage clusters in the proposed overlay zone depicted on the Cottage Cluster Limitation Overlay map, which is sized to include 30% of lots or parcels that have at least 5,000 square feet of developable area and are in an HB 2001 zone. Conversely, areas outside of the proposed overlay would allow cottage clusters on every developable, eligible HB 2001 lot outside the overlay (i.e., every HB 2001 lot that has at least 5,000 square feet of non-goal protected area). Therefore, the City would need to establish new minimum lot sizes, lot width, lot depths, and lot frontage requirements for many applicable

residential zones to ensure they are allowed on 100% of developable lots outside the overlay zone. The new minimum lot size for each eligible zone is based on the smallest existing lot in that zone that has at least 5,000 square feet of non-goal protected land. Setting these new minimum lot sizes will ensure that every lot with at least 5,000 square feet of non-goal protected land in eligible zones will allow cottage clusters outside the new overlay. The proposed overlay is shown below.



- Data Sources:  
RLIS  
City of Happy Valley

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	Total Developable Cottage Cluster Lots	Lots that Allow Cottage Clusters with Performance Metric Approach
In the Overlay	918 (30%)	0 (0%)
Not in the Overlay	2,143 (70%)	2,143 (100%)
<b>Total</b>	<b>3,061</b>	<b>2,143</b>

The proposed cottage cluster minimum lot sizes are shown below. These minimum lot sizes will ensure they are allowed on all eligible lots outside of the overlay (i.e., 70% citywide).

Zones	Minimum Lot Size (Square Feet)	Minimum Lot Width (Feet)	Minimum Lot Depth (Feet)	Minimum Frontage (Feet)
MURA	No Change	No Change	No Change	No Change
MURS	<del>7,000</del> 5,000	No Change	No Change	No Change
R5	<del>7,000</del> 5,000	No Change	No Change	No Change
R7	<del>7,000</del> 5,000	<del>50</del> 40	<del>70</del> 60	<del>50/35</del> 40/35
R8.5	<del>8,500</del> 5,000	<del>50</del> 40	<del>70</del> 60	<del>50/35</del> 40/35
R10	<del>10,000</del> 5,000	<del>60</del> 40	<del>80</del> 60	<del>50/35</del> 40/35
R15	<del>15,000</del> 5,000	<del>70</del> 40	<del>90</del> 60	<del>60/50</del> 50
R20	<del>20,000</del> 7,000	<del>80</del> 50	<del>100</del> 70	<del>80/50</del> 50
R40	<del>40,000</del> 9,500	<del>100</del> 60	<del>200</del> 80	<del>100/70</del> 50

For more information on the analysis and results, see Exhibit B – Performance Metric Analysis. Therefore, these criteria have been satisfied.

*(E) A Middle Housing type is considered “allowed” on a Lot or Parcel when the following criteria are met:*

*(i) The Middle Housing type is a permitted use on that Lot or Parcel under the same administrative process as a detached single-family dwelling in the same zone;*

**Staff Response:**

Aside from the proposed overlay zone, cottage clusters are permitted outright (P) in all of the same residential zones that single-family detached housing is permitted outright, including the R-40, R-20, R-15, R-10, R-8.5, R-7, R-5, MURS, and MURA zones. Per LDC 16.62 (Land Use Review and Design Review), cottage clusters are subject to the same review procedures as single-family detached homes. The draft amendments do not change the existing review procedures for cottage clusters.

Therefore, these criteria have been satisfied.

*(ii) The Lot or Parcel has sufficient square footage to allow the Middle Housing type within the applicable minimum lot size requirement;*

**Staff Response:**

As described in more detail under the response to Section 660-046-0010(3)(a)(D) of these findings, the Performance Metric Analysis determined that cottage clusters need



at least 5,000 square feet of developable (non-goal protected) land when considering the City's current development and design standards. See the staff response to OAR 660-046-0010 (Applicability) above or Exhibit C (Performance Metric Methods) for more details.

Therefore, this criterion has been satisfied.

*(iii) Maximum density requirements do not prohibit the development of the Middle Housing type on the subject Lot or Parcel; and*

**Staff Response:**

The LDC does not apply maximum density requirements to cottage clusters, nor will the draft amendments apply maximum density requirements to cottage clusters.

Therefore, per the findings above, this criterion has been satisfied.

*(iv) The applicable siting or design standards do not individually or cumulatively cause unreasonable cost or delay to the development of that Middle Housing type as provided in OAR 660-046-0210(3).*

**Staff Response:**

The LDC currently implements the Middle Housing Model Code for Large Cities for most cottage cluster design and development standards. Moreover, the draft amendments include a reduction of minimum lot size, lot width, lot depth, and/or frontage for cottage clusters in most zones to ensure they are allowed on 70% of lots that have at least 5,000 square feet of developable (non-goal protected) land outside of the proposed overlay zone. Given the siting (development) standards are being relaxed for most applicable zones (outside the overlay), and that the design and other development standards will not be amended, the amended and existing standards that apply to cottage clusters will not individually or cumulatively cause unreasonable cost or delay.

Therefore, this criterion has been satisfied.

*(F) A Large City must ensure the equitable distribution of Middle Housing by allowing, as defined in paragraph (3)(b)(E) above, at least one Middle Housing type other than Duplexes and Cottage Clusters on 75 percent or more of all Lots or Parcels zoned for residential use that allow for the development of detached single-family dwellings within each census block group, with at least four eligible Lots and Parcels as described in section (2), within a Large City.*

**Staff Response:**

The proposed amendments do not restrict other types of middle housing. All other types of middle housing will still be allowed within the Cottage Cluster Limitation Overlay Zone and elsewhere throughout the city as required (townhomes, duplexes, triplexes, and quadplexes). Further, cottage clusters will continue to be allowed outside the overlay on residential properties citywide.

Therefore, this criterion has been satisfied.

The following **Metro Urban Growth Management Functional Plan (UGMFP)** requirements are subject to the subject request:

The Metro UGMFP provides tools to meet regional goals and objectives adopted by Metro Council, including the 2040 Growth Concept and the Regional Framework Plan. Under the Metro Charter, the City of Happy Valley's Comprehensive Plan and implementing ordinances are required to comply and be consistent with the UGMFP. The UGMFP consists of 11 code titles with policies and compliance procedures for the following topics:

Title 1: Housing Capacity

Title 3: Water Quality and Flood Management (not applicable)

Title 4: Industrial and Other Employment Areas (not applicable)

Title 6: Centers, Corridors, Station Communities and Main Streets (not applicable)

Title 7: Housing Choice

Title 8: Compliance Procedures

Title 10: Definitions (not applicable)

Title 11: Planning for New Urban Areas (not applicable)

Title 12: Protection of Residential Neighborhoods (not applicable)

Title 13: Nature in Neighborhoods (not applicable)

Title 14: Urban Growth Boundary (not applicable)

Metro requires "substantial compliance" with requirements in the UGMFP. Per the definition in Title 10, "substantial compliance" means that the City's Comprehensive Plan conforms with the purposes of the performance standards in the functional plan "on the whole." Any failure to meet individual performance standard requirements is considered technical or minor in nature.

The findings below address applicable Titles of the UGMFP. Based on the findings described below, the proposed LDC amendments substantially comply with all applicable titles of the UGMFP.

#### **Title 1: Housing Capacity**

##### **Staff Response:**

Title 1 of the UGMFP is intended to promote efficient land use within the Metro urban growth boundary (UGB) by increasing the capacity to accommodate housing. The proposed LDC amendments do not reduce densities, whereas the changes to land use designations and zoning to prohibit cottage clusters in the proposed overlay while providing greater allowances outside the overlay will likely increase capacity for cottage clusters in most zones outside of the overlay, particularly given the relative size of areas and properties within and outside of the overlay area. The proposed amendments will not change capacity for other housing types. Further, Metro's 2023 Compliance Report (the most recent report available) concludes that Happy Valley complies with the City's Title 1 responsibilities. Therefore, Title 1 has been satisfied.

#### **Title 7: Housing Choice**

##### **Staff Response:**

Title 7 is designed to ensure the production of affordable housing within the UGB. Under Title 7, the City is required to ensure that its Comprehensive Plan and implementing ordinances include strategies to: ensure the production of a diverse

range of housing types, maintain the existing supply of affordable housing, increase opportunities for new affordable housing dispersed throughout the city, and increase opportunities for households of all income levels to live in affordable housing (3.07.730). The City will continue to report affordable housing units as required. The proposed LDC amendments will increase opportunities for cottage cluster development outside of the proposed overlay by reducing the cottage cluster minimum lot size and other lot dimensions. In addition, the City will continue to allow other forms of middle housing throughout residential zones, per existing provisions in the LDC and consistent with HB 2001 and implementing OARs.

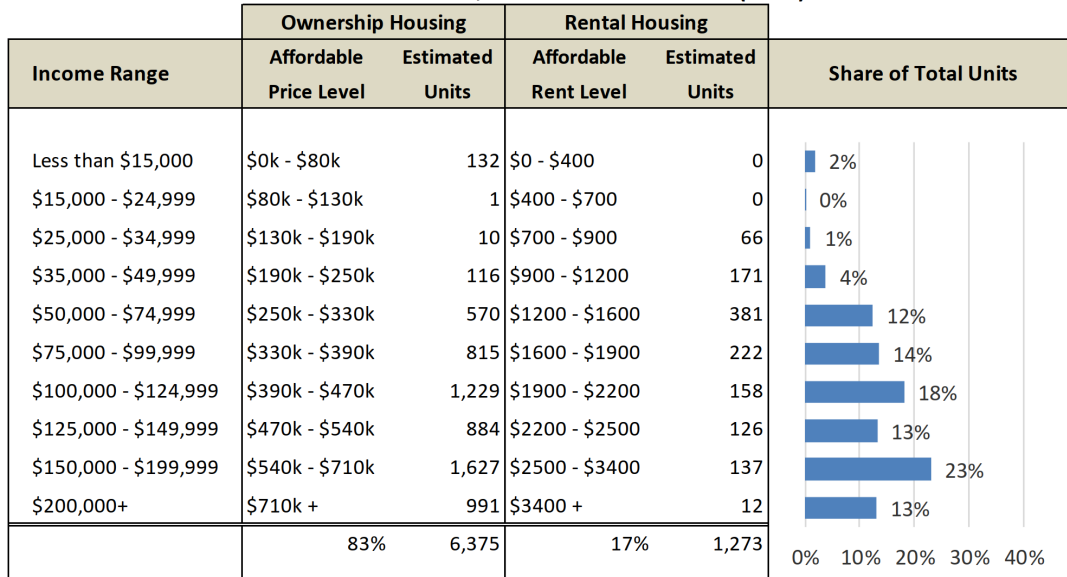
It should be noted that the City currently has two cottage cluster developments, both of which are located in the overlay area. Prohibitions in this area will provide better opportunities for their use elsewhere in the city to support housing choice in a wider geographic area while maintaining the existing supply of cottage clusters in the overlay area.

The following findings were prepared as part of the adoption process for the City's 2020 HCA further document compliance with Metro Title 7 (in italicized text). While the statistics cited below are somewhat outdated, the major thrust of the findings continues to be accurate.

*The Housing Needs Analysis and Buildable Land Inventory demonstrates that the City currently has a range of housing types and assumes that the diversity of housing types will increase in the City of Happy Valley. As one would expect, households with lower incomes tend to spend more than 30% of their income on housing, while incrementally fewer of those in higher income groups spend more than 30% of their incomes on housing costs. Of those earning less than \$20,000, an estimated 78% of owner households spend more than 30% of income on housing costs and 100% of renters. Because Happy Valley has an income distribution skewed towards higher income levels, there are relatively few households in these lower income segments, compared to most other cities.*

*In total, the US Census estimates that over 23% of Happy Valley households pay more than 30% of income towards housing costs (2018 American Community Survey, B25106). Housing cost burdens are felt more broadly for these households, and as the analysis presented in a later section shows there is a need for more affordable rental units in Happy Valley, as in most communities. There are few lower-value housing opportunities for many owner households, and potential support for some less expensive types of ownership housing. There is a need for more rental units at lower rent levels (<\$700/mo.).*

**FIGURE 4.4: PROFILE OF CURRENT HOUSING SUPPLY, ESTIMATED AFFORDABILITY (2020)**



Sources: US Census, PSU Population Research Center, JOHNSON ECONOMICS  
Census Tables: B25004, B25032, B25063, B25075 (2018 ACS 5-yr Estimates)

*Most housing in Happy Valley is found in price and rent levels affordable to those earning at least \$50,000 per year. There is very little housing available to those in lower income segments. Seven percent of recent sales in Happy Valley took place within the \$400,000 to \$700,000 price range. Homes in this range should be mostly affordable to households earning at least \$100,000 per year. An estimated 53% of local households fall within these income segments. Roughly 47% of households earn less than \$100,000 per year, meaning that the bulk of housing supply on the current for-sale market is likely too expensive for most of these households.*

Lastly, Metro's 2020 Compliance Report concludes that the City of Happy valley is in compliance with the City's Title 7 responsibilities. Therefore, Title 7 is satisfied.

#### **Title 8: Compliance Procedures**

**Staff Response:** Title 8 establishes a process for ensuring compliance with requirements of the UGMFP. An amendment to the City Comprehensive Plan or land use regulations is deemed to comply with the UGMFP only if the City provided notice to Metro as required by section 3.07.820(a). The City provided Metro with a copy of the proposed LDC amendments on August 6, 2024, 35 days prior to the first evidentiary hearing on September 10, 2024. In addition, Metro was provided a copy of the proposed LDC amendments via DLCD's Plan Amendments (PAPA) website on August 5, 2024, 36 days prior to the first evidentiary hearing. Therefore, Title 8 is satisfied.

The following **Goals and Policies from the City of Happy Valley Comprehensive Plan** are applicable to the subject request:

**Citywide Land Use Goals and Policies**

*LU-1. To establish a land use planning process and policy framework for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

*LU-1.1: The City of Happy Valley shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels that are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.*

*LU-1.2: The City of Happy Valley shall provide a range of housing that includes land use districts that allow senior housing, assisted living and a range of multi-family housing products. This range improves housing choice for the elderly, young professionals, single households, families with children, and other household types.*

**Staff Response:** The proposed LDC amendments will increase opportunities for cottage cluster development outside of the proposed overlay by reducing the cottage cluster minimum lot size and other lot dimensions. Cottage clusters can help support the City's goals for providing housing options that are more affordable and accessible for a range of the community's households, including senior residents, young people, and families. In addition, it should be noted that cottage clusters are just one form of middle housing and typically make up a smaller share of the housing market in most communities in comparison to other forms of middle housing such as duplexes, triplexes, quadplexes and townhomes. The proposed amendments will not affect the standards or allowed locations for any of those forms of housing which will continue to be allowed throughout the City's residential areas, consistent with state and regional requirements.

Therefore, these criteria have been satisfied.

*LU-1.3: The LDC will be revised to comply with the Comprehensive Plan to allow for changes over time as the City of Happy Valley goals and policies change.*

**Staff Response:** The draft amendments reflect a shift in the city's priorities for where a broad range of housing options (e.g., cottage clusters) should be available versus where existing neighborhoods should be preserved. In that regard, the amendments directly respond to and are consistent with this policy.

Therefore, this criterion has been satisfied.

### **Citywide Housing Goal and Policies**

*H-1. To provide for the housing needs of the citizens of the state.*

*H-1.1: To increase the supply of housing to allow for population growth and to provide for the housing needs of the citizens of the City of Happy Valley.*

*H-1.2: To develop housing in areas that reinforce and facilitate orderly and compatible community development.*

*H-1.3: To provide a variety of lot sizes, a diversity of housing types (including single family attached/townhouses, duplexes, senior housing, and multi-family) and a range of prices to attract a variety of household sizes and incomes to the City of Happy Valley.*

**Staff Response:** The proposed LDC amendments will increase opportunities for cottage cluster development outside of the proposed overlay by reducing the cottage cluster minimum lot size and other lot dimensions. The areas where cottage cluster opportunities will expand are throughout the city including opportunities in East Happy Valley, which is where the City determined cottage cluster development is most appropriate and compatible with surrounding areas. In addition, cottage clusters can help support the City's goals for providing housing options that are more affordable and accessible for a range of the community's households, including senior residents, young people, and families. As noted above, the proposed amendments will not impact the ability to develop any other housing type (e.g., townhomes, apartments, senior housing, or "plexes") and the City will continue to provide a variety of locations for development of those forms of housing, consistent with these policies.

Therefore, these criteria have been satisfied.

### **East Happy Valley Housing Policies**

*H-2.1: East Happy Valley will provide housing choices for people of all income levels and life stages. Housing will include:*

*a) A full range of integrated housing types, affordability, and tenancy preferences across the neighborhoods that will fulfill state and regional housing requirements and allow people of all ages and incomes to live in East Happy Valley.*

*b) A range of housing types that allows community members to continue to live locally throughout all of life's stages (i.e., entry level worker, student, young professional, retired, and elderly).*

**Staff Response:**

The proposed amendments that reduce minimum lot sizes, lot widths, lot depths, and/or frontage for cottage clusters outside of the overlay largely apply to residential zones in the East Happy Valley Comprehensive Plan area. These changes improve development and design flexibility for cottage clusters in East Happy Valley. As mentioned above, cottage clusters can expand opportunities that are more affordable and accessible for a range of the community's household types, including senior residents, young people and students, and families. As noted above, the City will continue to provide a variety of locations throughout the City for development of other forms of housing (e.g., townhomes, apartments, senior housing, or "plexes"), consistent with these policies.

Therefore, these criteria have been satisfied.

The following elements of **Title 16 of the Happy Valley Municipal Code (LAND DEVELOPMENT CODE)** are applicable to the subject request.

**16.61.050 Type IV procedure (legislative).**

[...]

*C. Notice of Hearing.*

*1. Required Hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications, unless otherwise noted.*

**Staff Response:**

A minimum of two public hearings before the Planning Commission and City Council, will be held for the proposed amendments. This staff report was prepared prior to the first of these evidentiary hearings.

Therefore, this criterion will be met.

*2. Notification Requirements. Notice of public hearings for the request shall be given by the Planning Official or designee in the following manner:*

*a. At least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and mailed to:*

- i. The record owner of real property as shown on the County tax roll that will be rezoned in order to implement the ordinance (including owners of property subject to a Comprehensive Plan amendment shall be notified if a zone change would be required to implement the proposed Comprehensive Plan amendment);*
- ii. Any affected governmental agency;*
- iii. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175;*
- iv. The owner of an airport shall be notified of a proposed zone change in accordance with ORS 227.175.*

*b. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed Comprehensive Plan and Development Code amendments at least thirty-five (35) days before the first public hearing at which public testimony or new evidence will be received. The notice to DLCD shall include a DLCD Certificate of Mailing.*

*c. Notifications for annexation shall follow the provisions of this chapter.*

*3. Content of Notices. The mailed and published notices shall include the following information:*

- a. The number and title of the file containing the application, and the address and telephone number of the Planning Official or designee's office where additional information about the application can be obtained;*
- b. The proposed site location;*
- c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, and the place where all relevant materials and information may be obtained or reviewed;*
- d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall; and*



*e. Each mailed notice required by Section 16.61.050(C) shall contain the following statement: "Notice to mortgagee, lien holder, vendor, or seller: The City of Happy Valley Land Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."*

*4. Failure to Receive Notice. The failure of any person to receive notice shall not invalidate the action, providing:*

*a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;*

*b. Published notice is deemed given on the date it is published.*

**Staff Response:**

The processes and notice described within this section have been followed by the City, including notice to the Department of Land Conservation and Development 35 days prior to the first evidentiary hearing. A Measure-56 notice was mailed to all properties within the proposed overlay district.

Therefore, these criteria are satisfied.

...

*F. Decision-Making Criteria. The recommendation by the Planning Commission and the decision by the City Council shall be based on the following factors:*

*1. Approval of the request is consistent with the Statewide planning goals;*

**Staff Response:**

As demonstrated above, this staff report includes findings describing how the proposed amendments are consistent with the Statewide planning goals.

Therefore, this criterion is met.

*2. Approval of the request is consistent with the Comprehensive Plan and any pertinent ancillary documents or plans adopted by the City; and*

**Staff Response:**

This staff report describes how the proposed amendments are consistent with the City of Happy Valley Comprehensive Plan.

Therefore, this criterion is met.

*3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property."*

**Staff Response:**

Areas in east Happy Valley where cottage cluster development opportunities will improve are presently provided with adequate public facilities and services or they include plans for future improvements and services, consistent with City facility master plans for water, wastewater and transportation facilities and services and other relevant planning efforts for East Happy Valley and Pleasant Valley/North Carver Comprehensive Plan.

Therefore, this criterion is met.

## **Chapter 16.67 COMPREHENSIVE PLAN MAP, SPECIFIC AREA PLANS, LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

### ***“16.67.015 Initiation of a plan amendment.***

- A. *Any change in the text, map or implementing ordinances of adopted Happy Valley land use regulations may be initiated by the City, any resident of the City, property owners or authorized agent. A change in the text may be initiated by as few as one person desiring a revision in the wording, scope, direction or organization of the plan. A change in the map which involves properties and/or district boundaries must be initiated by at least seventy-five (75) percent of the property owners or authorized agents who own or represent at least seventy-five (75) percent of the land area involved in the petition of change. The City may, for the purposes of revising or updating plans to comply with statewide goals, legal guidelines or other necessary criteria, initiate a change in the map or text of any plan and this Land Development Code at any time.*

#### **Staff Response:**

The proposed amendments to the LDC were initiated by the City of Happy Valley.

Therefore, this criterion is met.

### **16.67.020 Legislative amendments.**

*Legislative amendments are policy decisions made by City Council. Except in the case of expedited annexation, they are reviewed using the Type IV procedure in Section 16.61.050 and shall conform to the Transportation Planning Rule provisions in Section 16.67.060, as applicable.*

#### **Staff Response:**

The proposed amendments will be reviewed legislatively by City Council and reviewed as a Type IV procedure. Conformance with Transportation Planning Rule provisions is demonstrated in the response to OAR 660-012-0060.

Therefore, this criterion is met.

### **16.67.060 Transportation planning rule compliance.**

- A. *Review of Applications for Effect on Transportation Facilities. When a development application includes a proposed Comprehensive Plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060 (the Transportation Planning Rule – TPR) and the traffic impact study provisions of Section 16.61.090.”*

[...]

#### **Staff Response:**

The draft amendments to prohibit cottage clusters in the proposed Cottage Cluster Overlay zone, which will not affect existing or planned transportation facilities in those areas. The draft amendments to reduce cottage cluster minimum lot sizes and other lot dimensions will not increase allowed density of development and will not alter the anticipated number of vehicle trips in the Overlay area. As a result, the amendments will not have any significant effects on a transportation facility. Although these amendments may improve cottage cluster development opportunities in some areas (namely East Happy Valley), this housing type is already allowed in these areas along with other housing types that have comparable impacts on the transportation network, such as other middle housing types and multifamily housing. Existing and planned

transportation facilities in these areas are already designed to adequately serve higher densities and more intensive types of urban development. As a result, the proposed amendments are not anticipated to have any significant effects on transportation facilities.

Therefore, this criterion is met.