

Kattie Riggs

From: Robinson, Michael C. <MRobinson@SCHWABE.com>
Sent: Wednesday, April 10, 2019 10:48 AM
To: Kattie Riggs
Cc: Darren Gusdorf; 'Don Hanson'; Mike Peebles; Laura Terway; Carrie Richter (crichter@batemanseidel.com); 'pwalter@oregon-city.or.us'
Subject: City of Oregon City File No. PC 19-027; Development Code Amendments Including Equitable Housing
Attachments: 4.10.19 Letter to Mayor Dan Holladay with exhibits.pdf

Dear Ms. Riggs, please find attached a nine page letter with four exhibits submitted on behalf of Icon Construction and Development, LLC to the Oregon City City Commisison for the public hearing on April 17, 2019. Would you please place the letter before the City Commisison prior to the public hearing and in the official Planning Department for this matter?

Would you please let me know that you've received the letter?

Thanks very much. Mike

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April 10, 2019

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VIA E-MAIL

Mayor Dan Holladay
City of Oregon City City Commission
625 Center Street
Oregon City, OR 97045

RE: Oregon City File No. PC 19-027, Development Code Amendments Including
Equitable Housing (Planning File LEG 18-00001; Letter on behalf of Icon
Construction and Development, LLC

Dear Mayor Holladay and Members of the Oregon City City Commission:

This office represents Icon Construction and Development, LLC (“Icon”). Icon has asked me to review the existing and proposed Oregon City Municipal Code (the “OCMC”) land use regulations regarding alleys in the Park Place Concept Plan area (the “PPCP”) and lot averaging. This letter provides a legal analysis of the basis for requiring alleys for single-family dwellings in the PPCP and for maintaining the current lot averaging provisions.

The City Commission public hearing on April 17, 2019 is the opportunity for persons to testify retaining, modifying and replacing the residential design standards for the PPCP.

As the letter explains, neither the acknowledged Oregon City Comprehensive Plan (the “Plan”) nor the PPCP provide a legal basis for alleys as a mandatory requirement for single-family dwellings in the PPCP. Further, neither the existing nor the proposed land use regulations provide a “clear and objective” path for residential development within the Portland Metropolitan Area Growth Boundary (the “UGB”), the City’s UGB, so the City may not apply subjective standards to single-family dwellings in the PPCP pursuant to ORS 197.307(4).

I. SUMMARY OF DISCUSSION.

- The Plan and the PPCP do not require alleys for single-family dwellings.
- OCMC Chapters 16.12 and 17.21 derive no authority from the Plan or the PPCP to require alleys for single-family dwellings in the PPCP.
- OCMC Chapters 16.12 and 17.21 are not clear and objective, either as existing or as proposed.

II. ALLEYS, IN THE PARK PLACE CONCEPT PLAN.

1. Staff analysis of alleys.

The Oregon City Community Development Department (the “Department”) produced a memorandum entitled “Topics Identified for Direction by the City Commission” which contains the heading “Retain, Modify or Replace the Residential Design Standards for Park Place and South End Concept Plan Areas” at Page 9. The Staff recommends at Page 11 that the City Commission not amend the Residential Design Standards in the two Concept Plan areas but if the City Commission determines that the Residential Design Standards should be changed, that they be amended and not removed. In the same document, under the heading “Alleys in Concept Plan Areas” on Pages 11 and 12, Staff recommends that the City Commission limit alleys to the Concept Plan areas because “they implement the visions of the Concept Plans, and there is an alternative process to not construct alleys in specific locations within the Concept Plan areas which do not make sense and the relatively less public participation and time to consider the request.” The document also states at Page 12:

“The Concept Plan[s] do have specific language for alleys and removal of all alleys is problematic. If the City Commission would like to remove alleys for medium density residential, they should still be required for both Concept Plan areas for high-density residential and mixed use areas.”

As explained below, neither the Plan nor the PPCP support the conclusion that the PPCP has “specific language for alleys” that applies to single-family dwellings.

2. The Plan and the PPCP do not assume that alleys will be required for single-family dwellings in the PPCP.

A. Introduction.

Neither the Plan nor the PPCP provides for alleys in single-family dwellings in the PPCP. There is no legal basis for requiring alleys based on these two documents. Further, the City’s existing and proposed land use regulations do not comply with the “Needed Housing” statutes in ORS 197.303 and 197.307(4). The “Needed Housing” statutes apply to all residential development within the UGB. *Warren v. Washington County*, _____ Or App _____ (A169547) (2019).

B. The Plan does not discuss or require alleys for single-family dwellings in the PPCP.

Plan Section 10, “Housing”, at Page 73 provides:

“[Statewide Planning Goal 10] prohibits cities from discriminating against needed housing types.”

The Plan also states at Page 4:

“Concept Plans are land-use plans for areas of the city that have just been included in the Urban Growth Area. Before these areas can be zoned or subdivided, a Concept Plan must be completed and adopted by the City Commission and accepted by Metro. Concept plans require a detailed assessment of the area to determine the most appropriate intensity and type of land use, and when completed, are adopted as part of the comprehensive plan” (Exhibit 1).

The City Commission can find that the PPCP implements, and is part of, the Plan. The PPCP is based on a “detailed assessment of the area to determine the most appropriate intensity and type of land use...”. Unless the Plan provides for an assumption of alleys in single-family areas, then the PPCP is inconsistent with the Plan.

The 148-page Plan does not discuss alleys nor does the Plan mention the word “alley”. Alleys are not mentioned in Plan Section 2, “Land Use”, Plan Section 10, “Housing”, or Plan Section 12, “Transportation”, the Plan sections where one would expect alleys to be discussed if alleys were a tool to implement residential development in the PPCP. Moreover, alleys are not mentioned under Plan Goal 2.1, “Efficient Use of Land”, or Plan Goal 2.4, “Neighborhood Livability”, the Plan Goals where alleys should be discussed.

The City Commission can find that the Plan does not anticipate nor require alleys for single-family dwellings in the PPCP.

C. The PPCP does not require alleys for single-family development.

The City Commission adopted the PPCP on March 12, 2008. The PPCP contains 87 pages. One of the land use types in the PPCP is “Low/Medium Density Residential” provided for in both the North Village and South Village areas. PPCP, Figure 1.1, Park Place Concept Plan Urban Growth Diagram. The PPCP mentions alleys only once, on Page 27, under the heading “Park Place Concept Plan and Housing Development Types”. Under the description of “Multi-Family Housing,” the PPCP states that for multi-family housing, vehicle access is provided in the rear and with alleys (**Exhibit 2**). However, on the same page under the description of “Single-Family Housing”, no similar statement regarding alleys is provided. Nowhere else in the 87-page document is the word “alley” used.

D. Conclusion.

The City Commission can find that neither the Plan nor the PPCP establishes a requirement for alleys in single-family dwellings in the PPCP. The PPCP acknowledges that it must “reflect” the Plan. PPCP at Page 12. Had this been the case, the Plan, or certainly the PPCP, would have included a discussion of alleys for single-family dwellings. The fact that the City Commission adopted the PPCP referring to alleys in the multi-family areas without a

reference to alleys in the single-family areas demonstrates the City Commission's intent not to require alleys outside of multi-family areas. This is also true because the City Commission expressly required alleys for single-family dwellings in the South End Concept Plan. *See* South End Concept Plan, Pages 56 and 57 discussing alleys.

3. The existing OCMC requires alleys for single-family dwellings without authority from the Plan or the PPCP.

The Department produced a March 27, 2019 Memorandum entitled "Background Regarding Request to Replace the Residential Design Standards and Remove Alleys in the Park Place and South End Concept Plans" (the "Memorandum"). Memorandum Page 3 contains a heading entitled "Park Place Concept Plan Area Design Standards". The Memorandum provides that design standards are required to be used by builders when constructing new neighborhoods in the PPCP. The PPCP design standards are implemented through OCMC Chapter 17.21, "Single-Family Residential Design Standards – Park Place Concept Plan Area".

The Memorandum notes that OCMC Chapter 17.21 provides that its intent is to insure that new development is compatible with the goals and policies of the PPCP and applies to all new detached single-family dwellings in the PPCP. However, the Memorandum does not provide a basis for alleys in the PPCP nor does it cite to a provision for alleys in the PPCP and, given its conclusion that the PPCP is the basis for OCMC Chapter 17.21, the City Commission must find that OCMC 17.21 is not supported by the PPCP (or the Plan) for requiring alleys as a mandatory design element.

The absence of a requirement for alleys for single-family dwellings in the PPCP shows that alleys are not a mandatory design element in the PPCP. Moreover, Memorandum Page 7, under the Table entitled "Single-Family Residential Design Standards and Current Oregon City Municipal Code", in the column entitled "Garages", shows that OCMC Chapter 17.21 provides that garages may only have side, entry, rear entry or detached garages but does not expressly require alleys.

Additionally, Memorandum Page 7 also states that "alleys, and eyes on the street are specifically mentioned in both Concept Plans, although not identified as required for low density residential areas." The Department is correct that alleys are mentioned in the PPCP but alleys are not identified in the PPCP as required for low density residential areas; thus, there is no legal basis in either the PPCP or the Plan for requiring alleys for single-family dwellings.

4. Description of the process for requiring alleys and seeking an exemption from alleys.

A. Introduction.

The existing and proposed OCMC contains two chapters concerning alleys in the PPCP:

- OCMC Chapter 16.12, “Minimum Public Improvements and Design Standards for Development;” and
- OCMC Chapter 17.21, “Single-Family Residential Design Standards – Park Place Concept Plan Area.”

OCMC Chapters 16.12 and 17.21 are both proposed to be amended.

B. OCMC Chapter 16.12.

OCMC Chapter 16.12 applies to all development. OCMC 16.12.011.A. OCMC Chapter 16.12 applies to new construction of all single- and two-family living spaces. OCMC Chapter 16.12.011.B. However, OCMC 16.12.011.B excludes garages from living spaces.

OCMC Chapter 16.12.026 is entitled “Street Design – Alleys.” This OCMC provision is proposed to provide that public alleys “shall be provided in Concept Plan areas for the following districts[:] R-5, R-3.5, R-2, MUC-1, MUC-2, and NC zones.” OCMC 16.12.026 expressly requires public alleys, thus eliminating the potential for private alleys.

Where an applicant seeks to deviate from this standard, OCMC 16.12.013, “Modifications”, provides that such modification to OMC Chapter 16.12 may be considered if resulting from “constitutional limitations restricting the City’s ability to require the dedication of property or for any other reason, based upon the criteria listed below and other criteria identified in the standard to be modified.” A modification is processed by the City Engineer. The City Engineer may “require additional evidence to verify compliance.”

A Modification requires compliance with five standards, including meeting the “intent of the standard”, OCMC 16.12.013.A; providing for safe and efficient movement of pedestrians, motor vehicles, bicyclists and freight, OCMC 16.12.013.B; consistency with adopted transportation or utility plans, OCMC 16.12.013.C; requiring the modification to be “complementary with surrounding street design, OCMC 16.12.013.D; and if the modification is related to a constitutional issue, proposing a modification that complies with the state or federal constitutions, OCMC 16.12.013.E.

C. OCMC Chapter 17.21.

OCMC Chapter 17.21 applies to all new single-family dwellings within the PPCP. OCMC 17.21.010. House plans that conform to the standards in OCMC Chapter 17.21 may be approved as a Type I decision. An exemption to a house plan is processed as a Type II land use decision and contains subjective standards. OCMC 17.21.020.

OCMC 17.21.090 is entitled, “Garages and Accessory Structures.” OCMC 17.21.090.A provides that garages must be detached, side entry or rear entry but does not expressly require alleys. OCMC 17.21.090.B is entitled “Exemption”. This standard provides that the Community

Development Director may grant an exemption to OCMC 17.21.090 if topographic or pre-lot layout prevents the construction of detached, rear entry or side entry garages.

D. Conclusion.

The City Commission can find that OCMC 16.12.026 and 17.21.090, to the extent they mandate alleys in the PPCP for single-family dwellings, are inconsistent with the PPCP and the Plan because neither document anticipated or assumed that alleys would be mandatory for single-family dwellings in the PPCP. The City Commission can find that the authority to require alleys is not found in the documents implemented by OCMC Chapters 16.12 and 17.21, so these land use regulations are without authority to require alleys in the PPCP.

5. The proposed OCMC amendments are inconsistent with the “Needed Housing” statutes.

A. Introduction.

As acknowledged in the Plan at Page 4, all residential development within the UGB is subject to the “Needed Housing” statutes. *Warren, Id.*

B. ORS 197.303(1).

ORS 197.303(1) provides that “Needed Housing” means all housing on lands zoned for residential use that is determined to meet the need for housing within an urban growth boundary. “Needed Housing” includes attached and detached single-family housing. ORS 197.303(1)(a) **(Exhibit 3)** The Plan at Page 4 meets the requirement for the Needed Housing definition.

C. ORS 197.307(4); (6) and (7)

ORS 197.307(4) provides:

“Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

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

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

ORS 197.307(6)(a) provides that:

“A local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or esthetics that are not clear and objective if “the applicant retains the option of the proceeding under the approval process that meets the requirements of subsection (4) of this section.” (Exhibit 4).

The Needed Housing statutes apply to all residential development within the City’s UGB. If the City has a “clear and objective” path under ORS 197.307(4), the City may also adopt and apply an alternative approval path that is not clear and objective (this path may contain subjective standards).

Finally, ORS 197.307(7) provides that subject to the requirements of ORS 197.307(4) (clear and objective requirements), a local government may set approval standards under which a particular housing type is permitted outright, or impose special conditions upon approval of the specific development proposal or establish approval procedures, provided that these are clear and objective standards (**Exhibit 4**).

D. Analysis.

In order to determine whether the City’s existing and proposed land use regulations governing development in the PPCP meet the requirements of ORS 197.307(4), the first analysis is to determine whether the OCMC contains an existing or proposed clear and objective path for single-family development in the PPCP. The answer is no for the following reasons.

First, OCMC 16.12.026 is not clear and objective. This standard contains the phrase “conform to standards approved by the City Engineer.” The Oregon Land Use Board of Appeals (“LUBA”) has held that terms such as “comply with applicable standards” is ambiguous and, therefore, does not meet the clear and objective test. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009). Further, the modification criteria in OCMC 16.12.013 are not clear and objective. The subjective standards in OCMC 16.12.013.A-E include the following:

- “To verify compliance”;
- “Meets the intent of the standard”;
- “Provides safe and efficient”;
- “Consistent with” and “adopted transportation or utility plan”;
- “Complementary with a surrounding street design”; and

- “In the alternative.”

OCMC 16.12.011.B is ambiguous when compared with OCMC 16.12.026. The standards are unclear whether the City may mandate garages in the PPCP.

OCMC 17.21.010, “Purpose”, is subjective where it uses the word “implements”. It is unclear what “implement” means, what is required to demonstrate implementation and who makes that decision. OCMC 17.21.010’s use of the phrase “goals and policies” is also subjective because it is unclear which goals and policies of the PPCP must be applied.

OCMC 17.21.010’s use of the word “conform” is a subjective standard. It is unclear what “conform” means and what is required to demonstrate that something “conforms”.

Finally, OCMC 17.21.090.B is ambiguous because it uses the phrase “topographic or pre-existing lot lay out”, the word “mitigates” and the phrase “in the alternative”.

E. Conclusion.

The City Commission can find that notwithstanding the City’s best intentions, the existing and proposed land use regulations governing development in the PPCP do not contain clear and objective conditions, standards and procedures. Because that is so, an applicant does not have a clear and objective path and the City may not apply a subjective process to development in the PPCP under ORS 197.307(6).

6. Compliance with Statewide Planning Goals 2, “Land Use Planning” and 10, “Housing”.

The proposed amendments are contrary to the City’s assumptions in the Plan and the PPCP about the expected type of residential development and undercut the Plan’s compliance with Statewide Planning Goal 10, “Housing”. The City may not adopt amendments to its acknowledged land use regulations that undercut these assumptions. *4-J Land Co. v. City of Sandy*, 50 Or LUBA 525 (2005). To do so also undercuts the City’s obligation under Statewide Planning Goal 2, “Land Use Planning”, to support its land use decisions with an “adequate factual base”. Because the acknowledged Plan and PPCP do not require alleys for single-family dwellings in the PPCP, requiring them is inconsistent with the City’s implementation of Goals 2 and 10.

7. Requested action on alleys.

Icon respectfully requests that the City Commission give notice to Metro and DLCD pursuant to Metro Code (“MC”) 3.07.820(a) and ORS 197.610(1), respectively, of a future hearing on amendments to OCMC Chapters 16.12 and 17.21 in order to adopt clear and objective land use regulations providing that alleys are not required for single-family dwellings in the PPCP. An amendment to the PPCP is not required to amend OCMC Chapters 16.12 and 17.21. The City Commission need not refer this action to the Oregon City Planning Commission.

Mayor Dan Holladay
April 10, 2019
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In the alternative, and in the event that the City Commission determines to refer this action to the Oregon City Planning Commission, Icon respectfully requests that the City Commission do so with specific instructions to provide recommended language to the City Commission for clear and objective standards that do not require alleys for single-family dwellings in the PPCP.

III. LOT AVERAGING.

Icon and others have testified that the proposed amendments to the lot averaging provisions will reduce the amount of housing that can be developed. *See* February 27, 2019 testimony of Rick Givens and February 12, 2019 testimony of Montgomery B. Hurley. The proposed amendments are contrary to the City's assumptions in the Plan about the expected density of residential development and the Plan's compliance with Statewide Planning Goal 10, "Housing". The City may not adopt amendments to its acknowledged land use regulations that undercut these assumptions. *4-J Land Co. v. City of Sandy*, 50 Or LUBA 525 (2005). To do so also undercuts the City's obligation under Statewide Planning Goal 2, "Land Use Planning", to support its land use decision with an "adequate factual base."

Very truly yours,



Michael C. Robinson

MCR:jmhi
Enclosures

Cc Mr. Mark Handris (*via email*) (*w/enclosures*)
Mr. Darren Gusdorf (*via email*) (*w/enclosures*)
Mr. Don Hanson (*via email*) (*w/enclosures*)
Ms. Laura Terway (*via email*) (*w/enclosures*)
Mr. Pete Walter (*via email*) (*w/enclosures*)
Ms. Carrie Richter (*via email*) (*w/enclosures*)

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EXHIBITS

Exhibit 1 Oregon City Comprehensive Plan Page 4

Exhibit 2 Park Place Concept Plan Page 27

Exhibit 3 ORS 197.303(1)(a)

Exhibit 4 ORS 197.307(4), (6) and (7)

Plan Contents

The Oregon City Comprehensive Plan is divided into 15 sections. The number of the section is the same as the Land Conservation and Development Commission (LCD) Statewide Planning Goal the section is intended to show compliance with. Each section begins with background information, followed by goals and policies. A glossary of key terms is at the end of the document.

Goals and policies are official statements from the City Commission that provide standards for applying land-use plan designations to real property and making decisions about specific development. Because this plan is by law and necessity a comprehensive land-use plan, there is no hierarchy implied in the order of the sections and none of the goals or policies has priority except as stated in particular policies. When used to make decisions, all relevant goals and policies must be accounted for and considered.

Implementing the Plan

The Oregon City Comprehensive Plan is implemented through City Codes, ancillary plans, concept plans, and master plans.

City Codes are enforceable, detailed regulations regarding land use, land development, protection of natural resources, building design, traffic management, etc. For land use, City Codes particularly emphasize the City Zoning Ordinance, which lists specific standards for uses of land in the city; Subdivision Ordinance, which provides standards and regulations for new subdivisions and other land development; and related ordinances for issues such as steep slopes, tree cover, historic review, and site design or architectural design standards. The City Commission is responsible for adopting all code.

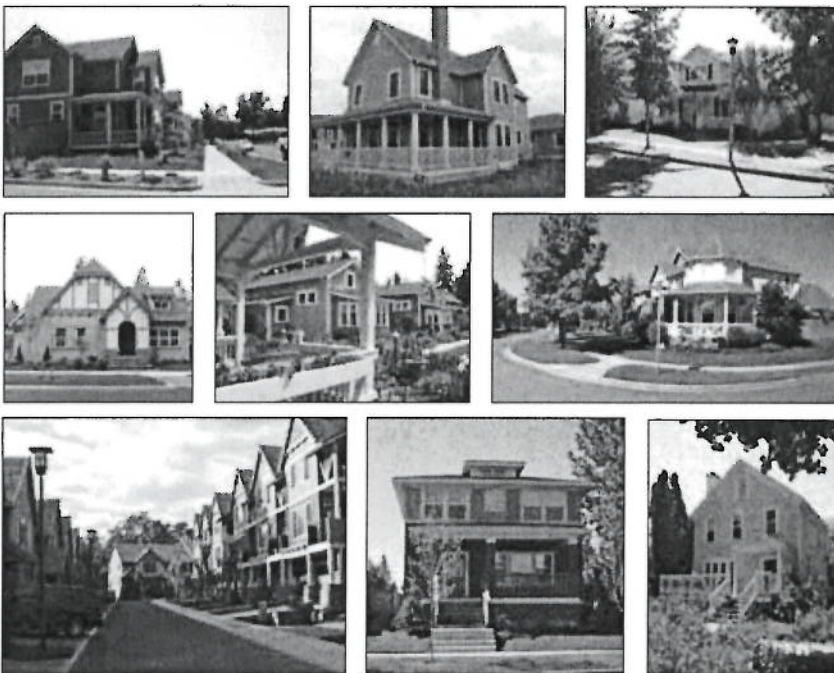
Ancillary plans are adopted by the City Commission for such things as parks and recreation, transportation systems, water facilities, and sewer facilities. Usually prepared by City departments through a public process, ancillary plans are approved by the City Planning Commission and adopted by the City Commission to provide operational guidance to city departments in planning for and carrying out city services. These plans are updated more frequently than the comprehensive plan.

Concept plans are land-use plans for areas of the city that have just been included in the Urban Growth Area. Before these areas can be zoned or subdivided, a concept plan must be completed and adopted by the City Commission and accepted by Metro. Concept plans require a detailed assessment of the area to determine the most appropriate intensity and type of land use, and when completed, are adopted as part of the comprehensive plan.

Master plans are required for large, phased development proposals for institutional uses such as the health services district around Willamette Falls Hospital. Master plans are intended to accommodate a variety of land uses types and address community factors at a neighborhood scale.

Park Place Concept Plan Housing Development Types

Houses don't always have to be large to provide a quality living space. A variety of housing sizes and types attract a mixture of ages, incomes, family structures and lifestyles to help create a richer, more diverse community.



Single-Family Housing

Part of the challenge of meeting the housing needs of a growing and thriving region is to offer housing types that address the values that drive demand for detached, single family housing, but with smaller spaces and smaller price tags.

Single-family houses can be a range of sizes, styles, and colors. Above all, they should be community-oriented with architectural elements that encourage "eyes on the street" and neighbor interaction.



Multi-Family Housing

Multi-family housing clustered around common open spaces (instead of parking lots) help foster a sense of community that usually isn't found in conventional apartment complexes. Vehicle access is provided in the rear and with alleys.

There are a variety of ways to provide quality, community-oriented apartments. In some cases, apartment complexes can be designed to look like single-family residences and contain six or seven apartments. This provides density without dramatically changing the character of the neighborhood.

2017 ORS 197.303¹

"Needed housing" defined

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

- (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 (Policy) to 197.490 (Restriction on establishment of park);
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; **and**
- (e) Housing for farmworkers.

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

- (a) A city with a population of less than 2,500.
- (b) A county with a population of less than 15,000.

(3) A local government may take an exception under ORS 197.732 (Goal exceptions) to the definition of "needed housing" in subsection (1) of this section in the same manner that an exception may be taken under the goals. [1981 c.884 §6; 1983 c.795 §2; 1989 c.380 §1; 2011 c.354 §2; 2017 c.745 §4]

¹ Legislative Counsel Committee, *CHAPTER 197—Comprehensive Land Use Planning*, https://www.oregonlegislature.gov/bills_laws/ors/ors197.html (2017) (last accessed Mar. 30, 2018).

2017 ORS 197.307¹

Effect of need for certain housing in urban growth areas

- approval standards for residential development
- placement standards for approval of manufactured dwellings

- (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.
- (2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.
- (3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.
- (4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:
 - (a) May include, but are not limited to, one or more provisions regulating the density or height of a development.
 - (b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.
- (5) The provisions of subsection (4) of this section do not apply to:
 - (a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.
 - (b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.
- (6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits

for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

- (a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section:
- (b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; **and**
- (c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

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

- (a) Set approval standards under which a particular housing type is permitted outright;
 - (b) Impose special conditions upon approval of a specific development proposal; **or**
 - (c) Establish approval procedures.
- (8) In accordance with subsection (4) of this section and ORS 197.314 (Required siting of manufactured homes), a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:
- (a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.
 - (b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.
 - (c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.
 - (d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.
 - (e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010 (Definitions for ORS chapter 455).