

## MEMORANDUM

TO: Honorable Mayor Holladay and City Commissioners of Oregon City  
FROM: Deputy City Attorney Carrie Richter  
DATE: April 12, 2019  
RE: Concept Plan Related Testimony on Equitable Housing Code Amendments

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### Introduction

This memorandum responds to a letter filed by Icon Construction and Development, LLC's ("Icon") attorney challenging several aspects of the proposed equitable housing code amendments, and most prominently, the City's authority to require alleys for all medium and high density development within concept plan areas. In this letter, Icon asserts that the City's Comprehensive Plan and two of its area-specific concept plans - Park Place Concept Plan ("PPCP") and South End Concept Plan ("SECP") do not require alleys for single-family dwellings and that the City's regulations requiring alleys – provisions within the amended Chapters 16.12 and 17.21 – violate state laws requiring the application of "clear and objective standards" to such residential development. The PPCP and SECP were adopted by the City in 2008 and 2014, respectively. Icon's letter could be interpreted to suggest that the City is legally prohibited from retaining the home design and alley obligations within these concept plan areas. As explained in greater detail below, Icon's assertions are misleading in some places and do not require the City to eliminate this alley obligation.

### Discussion

Before turning to Icon's assertions, the City's current standards require developments citywide to include alleys. Oregon City Municipal Code (OCMC) 12.04.225 currently provides:

Public alleys shall be provided in the following districts R-5, R-35, R-2, MUC-1, MUC-2 and NC zones unless other permanent provisions for private access to off-street parking and loading facilities are approved by the decision maker. The corners of alley intersections shall have a radius of not less than ten feet.

In other words, the proposed code amendments before the City Commission do not impose that requirement for the first time. Instead, the proposed amendments actually limit the requirement for alley to only concept plan areas. The changes to the above quoted provision are as follows:

16.12.026 – Street design – Alleys.

Public alleys with public access easements on private property shall be provided in concept plan areas for the following districts R-5, R-35, R-2, MUC-1, MUC-2 and NC zones unless other permanent provisions for private access to off-street parking and

loading facilities are approved by the decision maker. All alleys intended to provide access for emergency vehicles shall be a minimum width of twenty feet. The corners of alley intersections shall have a radius of not less than ten feet and shall conform to standards approved by the City Engineer. All private alleys require access easements and maintenance agreements to be recorded on affected properties.

Aside from whether the PPCP, SECP or Comprehensive Plan call for the provision of alleys, existing regulations require the provision of alleys. As a result, the City is not imposing a new alley requirement in the PPCP; it is removing the alley obligation from the rest of the City. Assuming that the provision of alleys makes housing more expensive, these amendments will remove that barrier. As a result, these amendments expand rather than undercut the City's assumptions with regard to the provision of housing, to the extent that the existence or non-existence of alleys affect the provision of an adequate supply housing under Statewide Planning Goal 10.

Regardless, there is no support for Icon's assertion that the City does not have the authority to require alleys in the PPCP or SECP areas. As an initial matter, the City is not limited in its regulatory authority to impose only those obligations that are expressly called out in its adopted planning documents. To the extent the Commission finds that authority necessary, the Community Development Director's memo dated April 10, 2019 points out that the PPCP calls for the provision of "good urban design", to which alleys are a part. Design standards, including street requirements, provide the more specific guidance deemed to further implement the broader policy choices made in the concept plans. The PPCP design standards require that where garages are provided, they must be "detached, side entry or rear entry," which is possible only through alleys. OCMC 17.21.090. In the PPCP and its Appendix F, "Typology" (attached), a variety of illustrative photos and drawings of residential and commercial development are used, as well as roadway design typology which includes alleys. None of the photos of single-family homes in the PPCP show houses with front-loading garages and a schematic drawing on page 25 illustrating the anticipated variety of housing types and densities depicts service via an alley.

Second, no part of the City's Comprehensive Plan or its ancillary documents such as the PPCP are within the scope of the legislative task before the City Commission for review. The PPCP was adopted in 2008 and it has been acknowledged as in compliance with all of the Statewide Land Use Goals. Challenging the content of these plans is a collateral attack on those acknowledged plans and need not be considered further.

Icon's letter states that the PPCP does not authorize alleys for low density residential areas. Alleys are not required for low density residential development – R-10, R-8 or R-6. Rather, alleys are required for medium and high density residential development; development that may include multi-family as well as 3-4 plex, duplex and single family development.

The amendment to OCMC 16.12.026 unambiguously requires that alleys are to be provided through "public access easements on private property" allowing alleys to remain private, subject to the provision of public access.

Finally, the code amendments proposed for adoption are "clear and objective" with respect to alleys within concept areas. As quoted above, alleys are required for all development within the high and



medium density zones. These alleys must have a right-of-way width of at least twenty feet, an improved street width of sixteen feet and have corners not less than ten feet in radius. OCMC Table 16.12.016.6 and 16.12.026. These are all clear and quantifiable, objective standards. Icon's challenge to discretionary standards refers to the modification criteria should an applicant seek to deviate from these clear and objective standards. OCMC 16.12.013. The modification criteria need not be clear and objective, as they provide an alternative approval process as authorized by ORS 197.307(6)(a).

Icon's concern about the obligation to comply with "the applicable standards" as they relate to the alley intersection radii obligations is correct. This provision is in reference to the City Engineer design specifications / drawings provisions that relate to construction details like pavement materials requirements and grades for proper drainage. This ambiguous reference will be removed from the proposed code.

In contrast, Icon's challenges to the Single-Family Design Standard amendments in OCMC 17.21 are not well taken because: (1) purpose statements provide background information on the intent of the drafters and are not approval criteria; and (2) the design standard for garages in OCMC 17.21.090 is clear and objective; the alternative path for deviating from those standards provides discretionary alternatives based on topographic limitations. Again, providing a discretionary path is allowable under ORS 197.307(6)(a), so long as a clear and objective path is available elsewhere, as is the case for the Single-Family Design Standards. Off-street parking and garages are not required for single-family residential development anywhere in the City. If an applicant wishes to construct a garage, it must be detached, rear or side entry or otherwise obtain an alternative design approval from the Community Development Director. Again, these standards meet the requirement to be clear and objective.

### Conclusion

In conclusion, these code amendments limit the previous City-wide application of alleys to concept plan areas to honor the work of the public which participated in the creation of the concept plans as well as the separate development code provisions that implement these plans. Retaining these provisions respects the deliberation that went into developing these discrete areas focused on heightened attention to urban form. The City Commission is entitled to revisit any of the concept plan design standards but it is not under any legal obligation to do so. As staff has pointed out, accepting this invitation when the proceedings, up until the City Commission hearing, did not include substantive revisions to concept area design standards, without the same robust public involvement process, may not make sense at this time.

# PARK PLACE: RESIDENTIAL TYPOLOGIES

## SINGLE-FAMILY RESIDENTIAL



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.



Rural roots. Variety. Community oriented. Green. Quality. Classic.



## SINGLE-FAMILY RESIDENTIAL: affordable alternatives

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.



Housing Variety

Houses don't always have to have to maximize their size 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.

Cottage Clusters

Cottage housing provides an option that preserves the privacy and personal space of a detached house in a smaller and less costly unit. Cottages provide a way to trade quantity of space for quality of space.

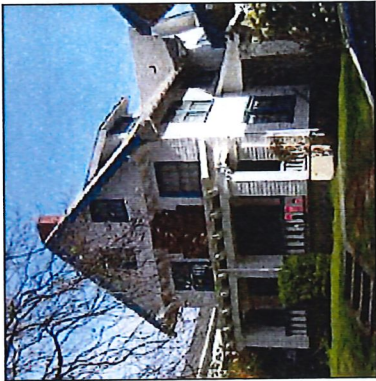


# PARK PLACE: RESIDENTIAL TYPOLOGIES

## MULTI-FAMILY HOUSING



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.



Highland's Garden (Denver, CO)



## MULTI-FAMILY HOUSING: alternatives



An ADU over a garage.

An auxiliary dwelling unit (ADU) or "granny flat" is a second self-contained dwelling unit created on a lot with a house, attached house or manufactured home. These dwellings are typically small (no larger than 800 sf) and are intended to provide housing options for a variety of single occupant tenants. Units can be joined to/over garages or stand alone on the property.



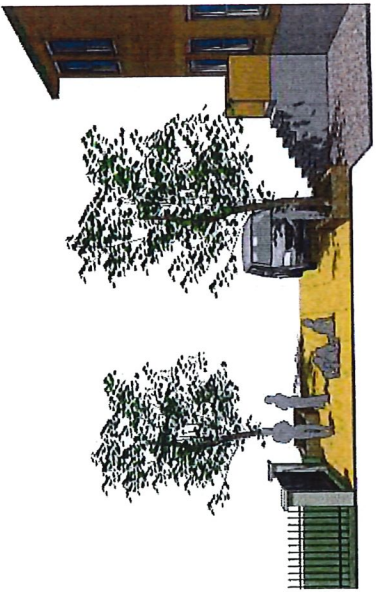
The Rose House is a net-zero energy ADU in Portland. Net-zero energy means that the house produces as much energy as it uses.



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.

# PARK PLACE: ROADWAY TYPOLOGIES

## INNOVATIVE ROAD AND EDGE TREATMENTS



woonerf is the dutch term for a “living street”

a green alley incorporates “green” features like permeable pavement, pavers, and/or a small vegetated filter strip to reduce stormwater runoff

