



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Kyle Collins, Associate Planner
Will Groves, Planning Manager

DATE: January 16, 2025

SUBJECT: Deliberations: Clear and Objective Housing Text Amendments – Definitions, Dimensional Standards, and Accessory Uses

I. OVERVIEW

The Deschutes County Planning Commission (Commission) will conduct deliberations on January 23, 2025 concerning text amendments establishing “clear and objective” housing development standards (file no. 247-24-000705-TA). Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on November 26, 2024. Staff presented the proposed amendments to the Commission at a work session on December 12, 2024.¹ A public hearing was held with the Commission on January 9, 2025² at which time the oral record was closed and the written record was left open until January 16, 2025.

Attached to this memorandum are the proposed text amendments and a staff report summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~.

II. RECORD

The full record is available for inspection at the Planning Division and at the following project website: <https://bit.ly/DeschutesClearAndObjective>

III. BACKGROUND

Beginning in 2017, the Oregon State Legislature passed a series of bills to encourage efforts to

¹ See Deschutes County Planning Commission December 12, 2024 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-58>

² See Deschutes County Planning Commission January 9, 2025 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-59>

expand the supply of housing statewide. The passage of Senate Bill (SB) 1051 prohibited cities from denying applications for housing developments within urban growth boundaries, provided those applications complied with “clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.”³

The provisions of SB 1051, along with subsequent bills, modified Oregon Revised Statutes (ORS) 197.286–197.314. Of relevance to the current project is ORS 197.307(4)⁴ which was modified to state:

- (1) *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.*

In 2023, ORS 197A.400⁵ (formerly ORS 197.307, as referenced above) was established by House Bill (HB) 3197⁶. The newly established ORS 197A.400 will become effective on July 1, 2025, and states the following [emphasis added]:

- (1) *Except as provided in subsection (3) 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, on land within an urban growth boundary, **unincorporated communities designated in a county’s acknowledged comprehensive plan after December 5, 1994, nonresource lands and areas zoned for rural residential use as defined in ORS 215.501.** 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*
- ...
- (3) *In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (1) 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 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 (1) of this section;*

³ <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051/Enrolled>

⁴ https://oregon.public.law/statutes/ors_197.307

⁵ https://www.oregonlegislature.gov/bills_laws/ors/ors197a.html

⁶ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3197/Enrolled>

(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 (1) of this section.

These provisions require local governments to apply only clear and objective standards, criteria, and procedures to applications for housing projects and may not discourage housing through unreasonable delay. Application of typical discretionary standards (e.g. “adequate public facilities,” “effective mitigation,” etc.) is prohibited. The statute is intended to address the concern that use of discretionary criteria leads to uncertainty, inconsistent administration, and delays that do not serve the goal of efficiently providing an adequate supply of housing stock.

IV. OVERVIEW OF AMENDMENTS

Numerous sections and language in the Deschutes County Code (DCC) affecting the development of housing do not currently meet the identified thresholds for “clear and objective” standards outlined in HB 3197. The primary focus of the Clear and Objective Code Compliance Project is to ensure the DCC complies with state statute and the objectives of the Deschutes County Comprehensive Plan.

With the assistance of consultants from MIG, planning staff have identified areas of the DCC that are not in compliance with statute and drafted packages of text amendments to address each issue. These packages have been broken into distinct segments to provide the public, the Commission, and the Deschutes County Board of Commissioners (Board) the opportunity to review and vet the proposed changes in a more structured and confined way.

Where possible, planning staff have endeavored to draft amendments that are a policy-neutral conversion of existing discretionary language to non-discretionary language. This ensures the original intent and desired outcome is preserved. When not possible, in certain limited circumstances alternative standards or criteria have been proposed. Additionally, while not exclusively associated with housing development, as part of this process certain amendments have been proposed to broadly remove ambiguity from implementing sections of the DCC, maintain conformity across all development standards, and ensure review clarity for staff and members of the public.

The first amendment package proposed through this process will broadly cover the following areas of the DCC:

- Definitions for the Deschutes County Zoning Code (DCC Title 18) and the Bend Urban Growth Boundary Zoning Ordinance (Title 19)
- Dimensional standards (e.g. height, structural footprints, setbacks, etc.) for Titles 18 and 19
- Accessory structure standards for Titles 18 and 19

V. HEARING TESTIMONY AND DISCUSSION

Two individuals provided written and oral testimony immediately preceding and during the public hearing on January 9, 2025:

1. *Robin Hayakawa, Central Oregon LandWatch*: LandWatch expressed concerns regarding the inclusion of the proposed definition “incidental and subordinate.” Specifically, it was noted that the terms “incidental and subordinate” have specific meanings outlined in the Oregon Revised Statutes (ORS) and the Oregon Administrative Rules (OAR) when dealing with resource zoned lands.

To ensure consistency with state law, LandWatch recommend that the County amend the proposed definition so that, when applied to resource land uses, so that it aligns with the definition under OAR 660-033-0130(42)(a). OAR 660-033-0130(42)(a) specifically provides that "A determination under ORS 215.213(11) or 215.283(4) that an event or activity is ‘incidental and subordinate’ requires consideration of any relevant circumstances, including the nature, intensity, and economic value of the respective farm and event uses, that bear on whether the existing farm use remains the predominant use of the tract."

2. *Nunzie Gould*: Ms. Gould’s testimony expressed dissatisfaction regarding the proposed text amendments in general. These comments focused primarily on the necessity of balancing various values such as housing affordability when drafting legislative amendments. Additionally, Ms. Goulds expressed a desire to evaluate the entire suite of proposed code amendments collectively that will ultimately be included in the clear and objective project.

VI. OPEN RECORD TESTIMONY AND DISCUSSION

As part of the open record period, the following comments were received from members of the public:

1. *Matt Cyrus, Deschutes County Planning Commissioner*: Commissioner Cyrus requested a revision to the proposed “grade” definitions in DCC Titles 18 and 19. Specifically, Commissioner Cyrus expressed concerned that the proposed “average grade” definition, which determines the point from which the height of a structure would be evaluated, would be prohibitively restrictive when evaluating structures which have development partially below ground elevation, as in a “walkout basement.”

Commissioner Cyrus proposed the following replacement definition:

“Grade, average”, for the purposes of calculating structural height, means the average of four points which shall be the highest finished grade abutting the structure and the lowest finished grade abutting the structure for each of the four sides or elevations.

VII. STAFF ADDENDUMS & DISCUSSION

As discussed during the public hearing, to incorporate feedback from colleagues in the Community Development Department (CDD), staff has incorporated minor changes to the proposed amendments to ensure efficient implementation should the package ultimately be adopted by the Deschutes County Board of Commissioners (Board). Outside of scrivener's edits, noteworthy changes are illustrated in the proposed amendments package attached to this memo and broadly cover the following areas:

- Removal of the term "housekeeping unit" and removal of its usage from the term "dwelling unit"
- Alterations to the term "kitchen," including a pared down description of the features which would formally constitute a "kitchen" moving forward
 - As currently proposed, "kitchen" would be defined as: "a discreet, enclosable area that includes a sink outside of a bath, and one or more of the following: a stove, range, oven, microwave, any food heating appliance, a range hood and/or exhaust vent, or rough-ins for any of these appliances."
- Alterations to DCC 18.116.040 and 19.92.020, dealing with the provisions of features allowed in dwelling units and accessory structures. Two additional sections, DCC 18.116.045 and 19.92.025, have been proposed to clarify the types of features expressly allowed within dwelling units.
 - As discussed during the public hearing, staff has included language which clarifies the following items when evaluating residential developments to ensure consistency in interpretation for both property owners and County staff:
 1. Building features which are allowed outright in both dwellings and accessory structures
 2. Building features which are allowed upon recording of a Deschutes County restrictive covenant ensuring that all uses will remain in compliance with the relevant land use regulations
 3. Building features which are allowed upon issuance of an approved land use permit which includes a finding that the proposed use is allowed on the subject lot or parcel

Some additional changes were proposed in response to public comments received during the public hearing and open record period. Those alterations are summarized as follows:

- In response to the comments from Central Oregon LandWatch discussed above, the following language has been included in the Definitions sections of both Titles 18 and 19:

As used in DCC Title 18, the following words and phrases shall mean as set forth in DCC 18.04.030, or, where such words and phrases are defined in applicable Oregon Revised Statutes (ORS) and/or Oregon Administrative Rules (OAR), as defined therein. If there is any conflict between the definitions set forth in DCC 18.04.030 and the definitions of the same words and phrases in applicable ORS and/or OAR, the definitions in ORS and/or OAR shall prevail.”

As used in DCC Title 19, words in the present tense include the future; the singular number includes the plural and the plural number includes the singular; unless the context clearly indicates the contrary, the word "shall" is mandatory and not discretionary; the word "may" is permissive; the masculine gender includes the feminine and neuter; and the term "this title" shall be deemed to include the text of this title and accompanying zoning maps and all amendments hereafter made thereto. As used in this title, unless the context requires otherwise, the following words and phrases shall be defined as set forth in DCC 19.04.040, or, where such words and phrases are defined in applicable Oregon Revised Statutes (ORS) and/or Oregon Administrative Rules (OAR), as defined therein. If there is any conflict between the definitions set forth in DCC 18.04.030 and the definitions of the same words and phrases in applicable ORS and/or OAR, the definitions in ORS and/or OAR shall prevail.

- In response to Commissioners Cyrus’ comments discussed above, the following language has been included in the Definitions sections of both Titles 18 and 19 dealing with “average grade”:

"Grade, average", for the purposes of calculating structural height, shall be determined by one of the following methods:

1. Two-Point Average Method: The average of two points which shall be the highest finished grade abutting a structure and the lowest finished grade abutting the structure.
2. Perimeter Sampling Method: The average of eight measurements around the entire external perimeter of the structure, with measurement points spaced equidistantly along the finished grade abutting the structure.

VIII. NEXT STEPS

At the conclusion of the meeting, the Commission can:

- Continue deliberations to a date certain;
- Close deliberations and propose a recommendation during this meeting;

Ultimately, the Planning Commission will provide a recommendation to the Board of County Commissioners. Options include:

- Approve amendments as drafted;
- Approve amendments with suggested edits;
- Approve certain amendments / deny others;

- Deny amendments altogether;
- Other

Attachments:

1. Staff Report & Proposed Text Amendments