

To: Byron Smith, City Manager
Rich Tovey, City Attorney
From: Clinton Spencer, Planning Director
Subject: Oregon Land Use Legislation Report
Date: April 18, 2024



The legislative short session for 2024 has concluded and it is time to evaluate our development code framework in context with the adopted legislation. I performed a similar analysis at the end of the 2023 session, but at the time determined that the city could simply fall back on statutory language rather than perform code amendments to comply with the 2023 package. Now that we have two years of legislation to consider, it is appropriate to consider all adopted legislation and consider what, if any, changes we deem appropriate to pursue.

SB 1537 (2024)

This is the omnibus housing bill and establishes many new requirements for housing production in the state. Many of them will have far-reaching consequences for municipal operations but are much more top down from the state and won't require action on the city's part.

- The Housing Accountability and Production Office is a nebulous construct which may or may not prove to be successful. It will monitor complaints about cities not following statewide housing law and enforce those rules on cities. It is also being set up to provide funding opportunities to bring cities into compliance with housing law. *(No action needed)*
- A new rule is established to let developers opt-in to new housing laws that are established after an application is submitted without re-applying. I am a little surprised this needed to be written. I assumed most jurisdictions would use a commonsense approach to let developers use whichever mechanism benefitted them more. If you submit a permit application with a 10-foot setback and the city lowers the setback requirement to five feet, of course you should be able to build at five feet. Conversely if it was submitted with a five-foot requirement which was increased to ten feet, they should be able to take advantage of what was in place at the time of application. *(No action needed)*
- Cities and developers can now be awarded attorney fees when an appeal is decided in their favor. *(No action needed)*
- Funding is being established for infrastructure supporting housing, and to subsidize affordable housing construction. *(No action needed)*

- Residential development may request up to ten deviations from property development standards and the city shall grant such requests unless they impact affordability, natural resource protection, and hazard mitigation. Building and fire code waivers are not eligible deviations. This process is remarkably similar to our infill process already in code. An applicant must demonstrate compliance with a specific set of criteria established in Section 38. This is a limited land use decision, but only the applicant is eligible to appeal. Local governments may apply to the housing production office for an exemption to the requirement, but that is not recommended. *(Recommend code amendment to clarify process and criteria)*
- Some limited land use decisions have been moved from a quasi-judicial process to an administrative process. Property line adjustments, replats, and expansion of a non-conforming use are all considered administrative effective January 1, 2025. Hermiston processes property line adjustments administratively, but the others require additional approvals. This has been a pet project of mine for several years, especially for replats. It is good to see legislation reflect the actual need. *(Recommend code amendments to subdivision and zoning code)*
- One-time UGB amendment for housing. The UGB expansion may only be undertaken when the city can demonstrate less than 20 acres of contiguous undeveloped residential land in the UGB and the expansion is less than 50 acres. *(No action needed. Hermiston will not qualify)*

HB 4063 (2024)

HB 4063 also establishes some new housing production requirements, very few of which will be applicable to Hermiston.

- Metro unincorporated lands are required to be planned for future housing. *(No action needed)*
- Realtors are again able to forward letters from prospective buyers to the seller. This had been previously banned and the ban was found unconstitutional. *(No action needed)*
- A remainder lot from a partition may be further partitioned again into three lots in the same calendar year if it's to be used for middle housing. Current law allows a partition to create three lots in a calendar year. The amendment allows lots within that partition to be partitioned into an additional three lots in the same year for middle housing land divisions. *(Potential amendment needed to subdivision code, but also could just be a citation in a report)*
- Clarifies single-unit housing property tax exemption process. *(No action needed)*

SB 1564 (2024)

Directs DLCD to develop model housing codes for small, medium, and large cities. The codes will encompass single-family, middle, multi-family, and ADU units. These model codes already exist but will be more refined. *(No action needed)*

HB 4026 (2024)

Prohibits a local government from referring an urban growth boundary expansion to the voters. *(No action needed)*

Housing Production Advisory Council Recommendations Report (2024)

In 2023 the governor formed a council to recommend future changes to law and policy to better to facilitate housing construction. The report was issued in February of 2024. It does not carry the force of law but is a set of recommendations that the governor will use to shape the 2025 legislative agenda. Some of the recommendations are listed below. I am working with several other eastern Oregon cities to discuss this document.

- Annual housing production of 36,000 “homes” is established by executive order 23-04. What constitutes a home is not specified.
- Develop a process to streamline the divestiture of government owned property suitable for housing construction.
- Expand executive order to declare housing an emergency and create expedited process for housing construction and approval.
- Create a one-time UGB expansion process solely for housing. Cities using the process will receive prioritized support and be required to adopt minimum affordability parameters.
- Streamline wetlands delineation and banking process for housing.
- Allow affordable housing developers right of first refusal for publicly owned land.
- Preclude local governments from creating special processes for surplus land for housing.
- Create by-right legislation allowing affordable housing on public land and precluding additional process or design standards for housing on public land.
- Expand Building Codes Division to increase staff and decrease plan review time.
- Consider increasing third party inspectors licensed by the state to inspect and perform plan reviews.
- Consider virtual inspections.
- Eliminate courtyard and separate utilities requirements for cottage cluster housing.
- Require cities to produce clear and objective building permit process similar to zoning standards. Handouts must be developed for land use, construction, and building permitting.
- Require only two rounds of review for civil plans. After the first round’s request for changes are addressed, future comments may only address fire and life safety.
- Consider increasing the percentage of by-right development adjustments in SB 1537 from 10% to 20%.

- Remove housing development from public discretionary review or review by city councils.
- Cities should create a “feasibility acceptance” process. This acceptance is binding for 18 months on the final application submittal.
- After a city deems an application complete, no additional information may be requested.
- Appeals should be sent to a hearings officer instead of planning commission or city council. State may create hearings officer circuits for cities with no hearings officer.
- Legislature to create definition for adequate findings to limit revisions.
- Applicants should have an opportunity to rebut questions of staff even after closure of a hearing.
- Allow use of single stair for buildings up to five floors.
- Allow multiple water and sewer services off a single mainline tap.
- Develop taskforce to determine conflicts between climate friendly rules and housing production targets.
- Consider if transportation planning standards create barriers to housing development.
- There are several transportation related mitigation measures proposed, all of which will streamline the process, including interim mitigation measures.
- Mandatory annual training for all cities over 10,000 for annual legislation and case law. Must be attended by at least one planning staff member.
- Consider SDC delay or financing options.
- Measure 50 reform. Increase from 3% to 5% annual increase. Exempt cities from compression. Authorize voters to increase permanent levy.
- Exempt property taxes temporarily for housing at 120% AMI or below.
- Incentivize construction by paying cities \$10,000 per housing unit constructed within city limits over next ten years.

There are some very good ideas and some extremely bad ideas in this document. It is worth reading from cover to cover. Some of the ideas, such as allowing only one civil review and then only addressing the initial review after that are very bad for long term infrastructure health. Third party inspectors are also a great idea. Not allowing additional information to be requested once an application is complete is a headache in practice. *(No action needed)*

HB 4064 (2022)

HB 4064 is a bill that was adopted several years ago at the behest of Oregon’s mass timber industry. In February of this year DLCD finally issued guidelines for how cities should address its provisions, which in essence mandate additional freedoms for siting manufactured and modular housing. Hermiston is generally in compliance already, but there are a few items in the new guidelines which will require amendment. In essence, the law still remains the same that cities must permit manufactured and modular housing in all areas that permit site built single-family housing. However, statute used to allow siting and design requirements that were

specified in the ORS such as requiring a foundation. With the adoption of the new language, it has been modified to state that cities may not place any additional requirements on manufactured housing that is not required for site-built homes. There are exceptions for compliance with statewide planning goals (requiring blow-outs for housing in flood plains for example) and to meet thermal envelope requirements for energy efficiency. The requirement to allow prefabricated housing on all single-family lots still does not apply to residential trailers or single-wide mobile homes. The specific prohibitions on prefabricated housing that will impact the city are the requirement for a 1,000 square foot minimum and multi-sectional, carport or garage, foundation, and roof pitch standards. **[Recommend code amendments]**

HB 2001 (2023)

This bill created the Oregon Housing Needs Analysis framework. The authority for housing production targets to be assigned to regions and cities are created here. DLCDC is tasked with developing those targets in 2024. Housing production has to be balanced across all levels of AMI. Requires DLCDC to adopt more flexibility related to administration of Goal 10 (Housing) and Goal 14 (Urbanization) with the goal of prioritizing housing production. First draft of the Housing Accountability and Production Office was established in this bill. *(No action needed, but continual monitoring is necessary)*

HB 3395 (2023)

A large bill which made many changes to housing production. At the time of passage, we considered if they needed immediate action or if we could roll them into other future changes.

- Adjusts threshold for cities to comply with middle housing rules from 10,000 to 2,500. *(No action needed)*
- Requires cities to allow affordable housing in commercial zones or mixed use structures with ground floor commercial. **[Recommend code amendment]**
- Allows cities up to seven extra days beyond the 120-day deadline to finalize an approval order. *(No action needed)*
- Amends the “shall approve” requirement for emergency shelter siting. Clarifies language. Cities still shall approve an emergency shelter as long as it is operated by a non-profit or government organization, is meeting building codes, not in an area subject to natural hazards, and cannot be used for any other purpose. **[Recommend code amendment]**
- Removes condominium plats from local review and moves regulation to the office of the real estate commissioner. *(No action needed, however it would be a good policy moving forward to understand how a manufactured dwelling park subdivision under ORS 92.830 is not a condominium under ORS 100 and out of the city’s hands)*
- Directs cities to accept funding commitments in the form of award letters for affordable housing projects. *(No action needed)*

- Requires cities to approve single-room occupancy structures of up to six units in single-family zones and consistent with multi-family density standards in all other residential zones. **(Recommend code amendment)**

HB 2127 (2023)

Specific legislation tied to expansion of Pendleton's UGB. Pendleton missed a filing deadline, and the legislature granted an extension. *(No action needed)*

HB 2898 (2023)

The bill relaxes and extends the permissions relating to siting a recreational vehicle as a shelter. Although there is little doubt the legislature will eventually require cities to allow RVs as dwelling units, this bill still relates to RV parks, Mobile Home parks, and RVs used as shelter after a wildfire. *(No action needed)*

HB 2984 (2023)

Requires cities to allow conversion of commercial property to residential use. A city may not require more parking than originally required for the commercial use. This has far reaching potential consequences for some of Hermiston's aging hotels. It is not clear from the adopted language in ORS 197A.445(3) if the conversion of commercial to residential use must be "affordable" housing or not. The other provisions in the section speak to affordable housing, but (3) does not. **(Recommend code amendment)**

HB 3197 (2023)

Requires cities to apply clear and objective standards to residential development. Added other types of housing outside of UGBs to also use clear and objective standards. *(No action needed)*

SB 1013 (2023)

Allows counties to allow placement of a recreational vehicle as an accessory dwelling in rural areas. This rule does not apply within an urban growth boundary. *(No action needed)*

HB 3362 (2023)

Allows a county to validate a unit of land created prior to 1/1/23 if the county later revoked the approval. This appears to be a specific fix that would have helped with the illegal partition at the corner of SE 4th St and Highway 395 which was stuck in legal limbo for nearly two decades. *(No action needed)*

Recommended Actions

There are several items which could be interpreted as requiring immediate code amendments before 1/1/25. In the past, we have treated statutory changes which override our code as being something we acknowledge and stop applying the affected portion of code (our 10-day appeal period became 12 days per statute, so we simply started changing our notices). However, the City Attorney had said that

having outdated code language can impact the entire enforceability of the code, especially in a litigation situation. Therefore, it is prudent to consider several changes to the code in the next year. The recommended amendments are listed in recommended order of importance.

1. Draft amendments to §157.145 governing manufactured dwelling standards to reflect the large amendments made to local design standards.
2. Draft new code language to clarify the up to ten variances process to comply with SB 1537 (designated as “housing land use adjustments” in the new statute).
3. Draft new code language to establish process and criteria for building affordable housing in commercial zones and for converting commercial structures to residential use.
4. Amend R-1 zone to permit up to six SRO units on a lot and amend other multi-family zones to permit SRO units.
5. Draft new code language for emergency shelter siting. Potentially amend the M-1 shelter language at the same time as it is now redundant with state law.
6. Amendments to Subdivision and Zoning code to clarify that replats, non-conforming use expansions, and property line adjustments are administrative decisions.
7. Clarify that middle-housing land divisions may be partitioned up to twice in a calendar year in the Subdivision code.
8. As part of these amendments, we may also consider working to develop code language for expedited land divisions and middle housing land divisions for the Subdivision code. It does not appear that DLCD has a model code for those processes but it is likely that we will need to have local code soon rather than relying on the statutory language which is confusing and hard to interpret.