
TRACKING CHANGES IN OREGON HOUSING POLICIES

Carrie Richter
Bateman Seidel
Portland, Oregon



Goal 10: Housing (1974)

Local governments must:

Inventory and plan for residential use of buildable lands to “encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capability of Oregon households.”

To do this local governments typically:

- Identify housing needs by type and density, considering financial concerns (HNA)
- Inventory supply of buildable lands (BLI)
- Alter comprehensive plan and zoning scheme to provide sufficient densities and housing types to meet projected future population

“Needed Housing” Statutes – ORS 197.303 / 307 (1981)

Where a need has been identified for a particular type of housing, that needed housing “shall be permitted in zone or zones with sufficient buildable land to satisfy that need.”

“Needed housing” defined to include (among other things):

- Government assisted housing, mobile homes, farmworker housing
- Housing which is identified as needed within the adopted needed housing inventory.

All standards, conditions and approval procedures for “needed housing” must be “clear and objective.” If the standard is not clear and objective, it cannot be applied to the development.

All housing is “needed housing” and requires a “clear and objective” path to approval (2017)

- Clear and objective standards do not impose “subjective, value-laden analysis that are designed to balance or mitigate impacts from development” and cannot be construed to support “two diametrically opposed positions.”
- ORS 197.307 also requires clear and objective procedures and conditions of approval.
- In addition to a clear and objective track for review, a local government may also provide a discretionary track that may be pursued at the applicant’s election. ORS 197.307(6).
- However, even with the alternative track, city cannot discourage needed housing through unreasonable cost or delay. ORS 197.307(6)

Recent needed housing cases:

- Requirement that stormwater runoff from a PUD will not “create negative impacts on natural drainage courses” such as erosion, turbidity or sediment transport” is clear and objective and not prohibited although it may be difficult to meet. *Homebuilders Ass’n of Lane County v. Eugene*
- Variable building setbacks determined by an average of the setback of existing buildings within 150 feet to the north and to the south of the proposed development lot is clear and objective. *Roberts v. Cannon Beach*
- Condition of approval attached to a master plan providing that “the building shall be set back...no less than 135 feet from south line” was not clear and objective. Did not matter that the master plan was adopted before ORS 197.307(4) was amended. *Group B LLC v. Corvallis*
- Annexation decision with condition requiring discretionary master plan does not allow the application of discretionary standards in the master plan review, even if the applicant at the time of annexation accepted the condition. *Icon Construction LLC v. Oregon City*

Other Housing-Related Legislative Changes

- HB 2001 (2019) and SB 458 (2021) – Mandates middle housing (duplex, triplex, fourplex, cottage cluster, townhouses) and land divisions in single family zones and LCDC adopted rules for the provision of middle housing
- SB 8 (2021) – Requires allowing affordable housing on land zoned commercial or that allows religious uses without a zone change or conditional use permit up to stated densities and provides for recovery of attorney fees to a prevailing housing provider.
- HB 3395 (2022) - Requires urban local governments to allow affordable housing on commercially zoned lands that are comparable in density to the allowed commercial uses; extends the emergency shelter siting obligations and exempts them from hearing requirements; requires allowing single room occupancies; and provides 7-days to adopt a final written decision for housing beyond the 120-day limit.

Forthcoming housing-related legislation:

- HB 3414 (2023) and its progeny: Must approve deviations from existing land use regulations when an application proposes net new housing units including certain development standards (e.g., setbacks, landscaping, and parking minimums) or design standards (e.g., façade materials, roof forms, and building orientation requirements).
- Housing Production Advisory Council recommendations: Infrastructure financing, constrained local and LUBA review, expedited building permit review without appeal, addressing work force shortages, expanded project financing opportunities.

Questions?

Carrie A. Richter, Bateman Seidel

Telephone: (503) 972-9903

Email: crichter@batemanseidel.com