



STAFF REPORT

Meeting Type: Planning Commission
Meeting Date: October 26, 2026
From: Kelly O'Neill Jr., Development Services Director
Josh Soper, City Attorney
Subject: HB 2138 Mandatory Code Amendments public hearing

DECISION TO BE MADE:

Hold a legislative public hearing to discuss proposed code amendments in Chapters 17.10, 17.38, 17.40, 17.64, 17.84, and 17.98 of the Sandy Municipal Code related to House Bill 2138 and provide a recommendation to the City Council.

APPLICABLE COUNCIL GOAL:

- **Goal 6.9:** Ensure compliance with state legislative and regulatory mandates through code amendments that are responsible and reflect the community's values.

BACKGROUND / CONTEXT:

In 2025, the Oregon legislature adopted House Bill (HB) 2138, expanding allowable middle housing and applying such regulations to more jurisdictions and certain unincorporated areas.

HB 2138 made numerous changes regarding substantive requirements for middle housing. Cities are required to implement many of these changes in their development codes by January 1, 2027.

Changes in HB 2138 include:

1. **Duplexes.** Cities are required to allow not just attached but also detached duplexes. Sandy already allows detached duplexes, but HB 2138 will now prevent Sandy from prohibiting them in the future.
2. **Single Room Occupancies (SROs).** This is an unfamiliar term to many (it was introduced by the legislature in 2023) which refers to "A residential development with no fewer than four attached units that are independently rented and lockable and provide living and sleeping space for the exclusive use of an occupant but require that the occupant share sanitary or food preparation facilities with other units in the occupancy." It has been described as similar to a dorm. These are already allowed in Sandy as required by existing law, but HB 2138 made several significant changes. For one, SROs must now be allowed to be detached, rather than just attached. It is unclear what that is intended to look like, but in theory it could look a lot like a cottage cluster, but without individual kitchens and instead some sort of share kitchen facility. In addition, the bill increases the number of units allowed for an SRO in a multi-unit zone to be three times the maximum unit density of the zone.

3. Bonus units. When one or more of the units in a middle housing development are accessible or affordable, HB 2138 requires cities to allow an additional bonus unit. This means that, in these circumstances, the City will be required to allow triplexes rather than just duplexes.
4. Retention of existing units. The City will now be required to allow an existing unit on a property to be retained when a middle housing development is proposed. In other words, when a property has an existing single-family dwelling, the owner may be able to build a duplex on the property and keep the single-family dwelling, provided the new duplex complies with siting and design standards.
5. Limitations on when the City can require a traffic impact study for middle housing developments.

KEY CONSIDERATIONS / ANALYSIS:

City staff were advised by the City Attorney that compliance with the above HB 2138 requirements could be accomplished by amending portions of Chapters 17.10, 17.38, 17.40, 17.64, 17.84, and 17.98 in Title 17 of the Sandy Municipal Code. With these revisions, the City would be in compliance with these requirements of HB 2138.

Unfortunately, the Planning Commission has limited ability to modify any of the proposed code language and still achieve compliance with the new state statute.

UPDATE

On October 16, 2026, DLCD and the Housing Accountability and Production Office (HAPO) sent an email about the code amendments which included the following:

"Thanks for providing the city's proposed amendments for review. I've reviewed the code amendments referenced in the subject line with regard to housing laws as that term is defined in ORS 197A.800(5) and have the following comments. I'm available to discuss further if there are questions, as well as to hear further explanation if I've misread the amendments or am missing context from elsewhere in the city's land use regulations.

- *Make sure the city's off-street parking regulations in 17.98.20 are amended to comply with ORS 197A.430(3)(a)(B), covering the maximum allowed parking requirement for SROs with more than 6 units. This would appear to be 1.5 spaces for every 3 units, based on the Multi-Family Dwellings ratio of 1.5 spaces per studio or 1-bedroom unit.*
- *Middle Housing Land Divisions:*
 - *17.100.50.D.4 is not proposed for amendment. HB 2138 amended ORS 92.031(2)(d) to allow more than 1 unit/lot or parcel for existing retained dwellings.*
 - *HB 2138 amended ORS 92.031(3)(e) to allow an MHLD to be submitted before, at the same time, or after as the middle housing building permit. Sandy's code in 17.100.50 appears silent on this point.*
 - *Similarly, ORS 92.044(1)(c)(C) was amended to require a process for concurrent review of a land division to create parent lots/parcels and MHLDs on the resulting lots/parcels.*

There are multiple options for the city to address compliance with amendments to housing laws. To the extent that the city intends to amend its land use regulations, we'd recommend codifying the procedural allowances for MHLDs mentioned above. This is clearer for applicants and city staff if they're relying on the city's zoning ordinance for information about applicable standards and processes. Alternatively, if

the city's code doesn't conform to recent legislation, the state statutes apply directly for application review (ORS 197.646(3)). The housing model codes and modules are also a resource the city could apply in processing a land use application as a way to stay in compliance with housing laws. See OAR 660-008-0415 (adopt via reference) and 660-008-0420 (apply model code directly to an application for housing law compliance).

I did not otherwise have questions or comments on the proposed amendments. I'm available to answer questions or provide clarifications."

After much consideration, our attorney has a few different interpretations as explained in the table below. Exhibit A has been revised to address the HAPO comment in Section 17.100.50.D.4.

HAPO Comment	City Response
<p>Make sure the city's off-street parking regulations in 17.98.20 are amended to comply with ORS 197A.430(3)(a)(B), covering the maximum allowed parking requirement for SROs with more than 6 units. This would appear to be 1.5 spaces for every 3 units, based on the Multi-Family Dwellings ratio of 1.5 spaces per studio or 1-bedroom unit.</p>	<p>The proposed amendments are intended to comply with ORS 197A.430(3)(a)(B), which provides that "a local government may not require more parking for every three single room occupancy units than the local government requires for... A dwelling unit in a multiunit housing development, if the single room occupancy development has more than six units."</p> <p>The City has two parking requirements for multiunit housing developments depending on unit size:</p> <p>1.5 per studio unit or 1-bedroom unit 2.0 per 2-bedroom unit or greater</p> <p>ORS 197A.430(3)(a)(B) does not require the City to use the lowest tier of parking requirements applicable to multiunit housing. It only requires that the City not impose a parking requirement that is greater than what it requires for "a dwelling unit in a multiunit housing development." The City therefore may choose which of its multiunit housing parking requirements it will apply to SROs.</p>
<p>17.100.50.D.4 is not proposed for amendment. HB 2138 amended ORS 92.031(2)(d) to allow more than 1 unit/lot or parcel for existing retained dwellings.</p>	<p>This has been corrected with additional amendments to 17.100.50(A) and (D).</p>
<p>HB 2138 amended ORS 92.031(3)(e) to allow an MHL to be submitted before, at the same time, or after as the middle housing building permit. Sandy's code in 17.100.50 appears silent on this point.</p>	<p>As noted by HAPO, current code is silent on this subject and therefore no amendment is required in order to comply with state law; the City will allow these applications to be submitted as required.</p>
<p>Similarly, ORS 92.044(1)(c)(C) was amended to require a process for concurrent review of a land division to create parent lots/parcels and MHLs on the resulting lots/parcels</p>	<p>Existing language in SMC 17.18.00 allows multiple applications to be submitted concurrently. The City will apply this to continue to allow the concurrent application types noted by HAPO.</p>

BUDGET IMPACT:

Staff and City Attorney expenses that have already been incurred.

RECOMMENDATION:

Hold a legislative public hearing to discuss proposed code amendments in Chapters 17.10, 17.38, 17.40, 17.64, 17.84, and 17.98 of the Sandy Municipal Code related to House Bill 2138 and provide a recommendation to the City Council.

LIST OF ATTACHMENTS / EXHIBITS:

- Draft Ordinance No. 2026-21
 - Exhibit A. Code modifications
 - Exhibit B. Findings