

**STAFF REPORT/FINDINGS OF FACT
TYPE IV DEVELOPMENT CODE AMENDMENTS**

DATE OF HEARING:	January 22, 2024
PROJECT NAME:	Clear and Objective Code Audit
APPLICATION TYPE:	Type IV Review - Development Code Amendments
APPLICABLE CRITERIA:	SMC Chapter 17 Section 17.04.70 Text Amendments
APPLICANT/OWNER:	City of Sandy
SECTION NUMBERS:	Chapters 17.02, 17.08, 17.10, 17.12, 17.18, 17.20, 17.22, 17.28, 17.30, 17.34, 17.36, 17.38, 17.40, 17.42, 17.44, 17.46, 17.54, 17.56, 17.60, 17.66, 17.72, 17.74, 17.80, 17.84, 17.86, 17.88, 17.90, 17.92, 17.96, 17.98, 17.100, 17.102 and Chapter 15.30
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FILE NO.:	23-046 DCA

BACKGROUND

This staff report summarizes key issues and decision points for the Sandy Clear and Objective Code Audit project. The purpose of the Sandy Clear and Objective Code Audit is to ensure that the City of Sandy’s Development Code (SDC) complies with and implements certain Oregon state laws and legislation, primarily Oregon State statute (ORS 197.307). ORS 197.307 requires that local governments provide an approval pathway for housing developments that includes only clear and objective standards, conditions, and procedures.

Most of the proposed amendments are “policy neutral” (i.e., they are intended to result in outcomes that are consistent with outcomes resulting from the current Development Code). There are some significant changes to the content of Chapter 17, all of which are intended to clearly describe the City’s Code requirements and the processes used in making land use decisions. Clear and objective standards for making decisions are also included in the revised Code. Some sections of Code have been rearranged to improve the organization and structure so that it is easier to read.

SUMMARY OF OTHER CODE TOPICS:

The majority of the draft amendments in the attached agenda packet are related to clear and objective revisions for compliance with ORS 197.307. However, the packet also includes amendments that implement other Oregon statutes and legislation, as well as implementing the City's recently adopted Transportation System Plan. Below is a summary of these other Code topics:

- **House Bill 2583 (2021)** – This legislation prohibits local governments from establishing or enforcing occupancy limits for dwelling units that are based on the familial or nonfamilial relationships among any occupants. Changes needed for compliance are proposed primarily in Chapter 17.10 Definitions.
- **House Bill 4064 (2022)** – This legislation prohibits local governments from subjecting manufactured homes to standards that do not apply to site-built single-family dwellings on the same land, except:
 - Protections related to statewide land use planning goals; and
 - Regulations related to thermal envelope performance standards.

To comply, the standards in SDC 17.90.140 regulating minimum floor area, foundation style, roof pitch, and siding for manufactured homes outside of manufactured dwelling parks are proposed for deletion. Manufactured homes will continue to be subject to the single-family design standards in SDC 17.90.150.

HB 4064 also addresses “prefabricated structures,” which are equivalent to what the SDC defines as “modular homes.” The legislation requires local governments to allow prefabricated structures on land zoned for single-family homes and within manufactured home parks. The proposal for addressing this requirement is to include prefabricated and modular homes in the definition of single detached dwellings, which already includes manufactured homes.

- **Senate Bill 8 (2021)** – SB 8 requires local governments to allow affordable housing meeting a specific definition and criteria on a wide range of sites. SB 8 (encoded as ORS 197.308) provides height and density bonuses in areas zoned for residential uses; however, it does not specify any densities for those zoning districts that do not otherwise allow housing. The project team recommended adding a new SDC chapter – Chapter 17.88 Affordable Housing – to address these requirements. The team also recommended specifying that the height and density standards in the Medium Density Residential (R-2) zoning district will apply in non-residential zones (maximum height of 35 feet; maximum density of 14 units per acre). The City Council and the Commission supported this recommendation.
- **House Bill 2008 (2021)** – HB 2008 is similar to SB 8 but limited to affordable housing on property that is owned by religious nonprofits and also provides a somewhat different definition of affordable housing. It requires local governments to allow the development of

affordable housing on property that is not zoned for housing, provided the property is contiguous to a zone that does allow housing and is not zoned for industrial uses. Density is based on standards for the contiguous zone that allows housing. The provisions of HB 2008 are also incorporated into the proposed new Chapter 17.88.

- **House Bill 3395 (2023)** – HB 3395 is an omnibus housing bill that includes sections addressing various housing regulations. Sections reflected in the revised SDC amendments include the following: Section 2 on residential use of commercial lands; Section 15 on subdividing for development of affordable housing; and Section 17 on single room occupancies.
 - **Section 2.** This section requires local governments to approve certain affordable housing projects on land zoned for commercial (but not industrial) use within urban growth boundaries. This includes residential structures in which each unit is affordable to a household earning 60% of the area median income (AMI) or less; and, mixed-use structures with ground floor commercial uses and residential units that are affordable to “moderate income” households earning 80% to 120% of the AMI.
 - **Section 15.** In cases where a subdivision is being developed with affordable housing, HB 3395 requires local governments to accept award letters from public funding sources as financial assurance to guarantee water and sanitary sewer installation. The provisions of HB 3395 allow a public funding award letter as an alternative form of financial guarantee for affordable housing.
 - **Section 17.** HB 3395 requires local governments to allow “single room occupancies” in residential zoning districts. Single room occupancy (SRO) is a form of housing in which the units share bathroom or kitchen facilities with other units on the floor or in the building. SRO housing with just a few units could look similar to a house with individually rented bedrooms. Larger SRO developments (say, with more than six single room units) would be more akin to a dormitory with shared kitchens and potentially shared bathrooms. HB 3395 does not specify what parking standards should apply to SROs. The project team recommends requiring one space per SRO unit, assuming that most units will be occupied by only one person. The City Council and the Commission supported this recommendation. The provisions of HB 3395 are also incorporated into the proposed new Chapter 17.88.
- **House Bill 2984 (2023)** – Among other things, HB 2984 updates the definitions of “affordable housing” and “area median income,” as used in SB 8 and HB 3395. The updated definitions have been incorporated into Chapter 17.88 Affordable Housing.
- **Dark Sky Ordinance, Sandy Municipal Code Chapter 15.30** – The Development Code frequently references the lighting standards in SMC Chapter 15.30; therefore, it is necessary to make these regulations clear and objective to comply with ORS 197.307. In

addition to the clear and objective updates proposed in that chapter, the project team has added the following in response to specific requests by City Council members and staff:

- Provisions for LED lighting – and associated color range limits (maximum 4125K).
 - Provisions permitting the use of laser lights for holiday decorations – with limitations to prevent safety concerns.
- **Transportation System Plan (TSP)** – The draft code includes amendments associated with implementation of the City’s adopted TSP. The Planning Commission and City Council reviewed these draft amendments at the April 17, 2023, joint work session. The amendments are being integrated with the Clear and Objective Code Audit project to ensure that all of the transportation-related Code language that applies to housing is clear and objective. The TSP amendments and Clear and Objective amendments will be adopted together.
 - **Exception for tree removal for parks maintenance.** City staff recommended adding a new exception from the City’s tree removal permit requirements for tree removal from City-owned parks and natural areas for trail installation/maintenance, safety improvements, and general park maintenance. The Council and the Commission supported this recommendation. The City Council also suggested at the June work session that exceptions also be allowed in City-owned parks or trails if tree removal is needed for “view maintenance.” This exception for view maintenance has been incorporated into the draft code in Section 17.102.20(B).
 - **Type I Adjustments.** Type I Adjustments are currently available when an applicant wants to vary a standard by up to 10 percent; Type II Adjustments allow variations of up to 20 percent. Both types of Adjustments have discretionary criteria. Under state law, local governments are required to provide public notice and the opportunity to appeal for such decisions. As suggested by the City Attorney, the project team recommended removing the Type I Adjustment process entirely to eliminate the current inconsistency with state law. The City Council and the Commission supported this recommendation.

EXHIBITS

Exhibit A. Proposed Municipal Code Modifications

Exhibit B. Draft Ordinance No. 2024-01

Exhibit C. Email from Peggy Sheehan (submitted January 3, 2024)

FINDINGS OF FACT

GENERAL FINDINGS

1. Section 17.04.70 contains requirements for text amendments to the Sandy Development Code. This Code may be amended whenever the public necessity, convenience, and general welfare require such amendment and where it conforms to the Sandy Comprehensive Plan and any other applicable policies. In accordance with Section 17.04.70 (A), the initiation of an amendment may be accomplished by a majority vote of the City Council, a majority vote of the Planning Commission, or citizens can request that the City Council initiate an amendment. The amendments are necessary to address the requirements in ORS 197.307 and the recent legislation described above. The City Council initiated the Clear and Objective Audit.
2. In accordance with Section 17.04.70 (B), the Planning Commission and City Council shall review proposed amendments in accordance with the legislative provisions of Chapter 17.20, Public Hearings. The purpose of the hearings is to determine if the code amendments are sufficient to address their intended purpose.
3. Notice was provided to the Department of Land Conservation and Development on December 11, 2023. The Oregon Department of Transportation (ODOT) was highly involved with the City during the creation and adoption of the updated 2023 Transportation System Plan (TSP) and support the code changes that implement and strengthen ties between transportation and housing in Sandy's Development Code (SMC). No comments were received from any other state or federal agency.
4. Notice of the proposed amendments were mailed to every property owner in city limits on December 18, 2023. The letter was sent to notify property owners that the City of Sandy is proposing land use regulations that may affect the permissible uses of their property. This notice was sent in accordance with Ballot Measure 56 (1998).
5. As of publication of this staff report, staff has received one (1) written public comment. The public comment was submitted by Peggy Sheehan (Exhibit C) via email on January 3, 2024. While staff understands and appreciates Ms. Sheehan's comment, her suggested code edit would go beyond the requirements of the statute.
6. The applicable comprehensive plan policies identified by a review of that document relating to this topic include Goal 1, Goal 2, Goal 5, Goal 9, Goal 10, and Goal 12.

Goal 1 Citizen Involvement

7. Goal 1 establishes policies for development of a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process. The following policies are from the Sandy Comprehensive Plan:

Policy 1. The City of Sandy shall maintain a citizen involvement program to allow opportunity for citizen involvement in the ongoing planning process.

Policy 4. The City shall disseminate information and public notice to the residents of the Sandy area concerning on-going planning activities and pending actions.

Policy 5. The Planning Commission shall be the lead body responsible for ensuring ongoing citizen involvement related to the development, review, updating, and implementation of the Plan and implementing ordinances.

Findings: The City has discussed this topic openly at multiple work sessions and will hold public hearings before both the Planning Commission and City Council to afford the general public the opportunity to be involved. Notice of this meeting was posted in multiple public places, published in the Sandy Post, posted on the City's website project page, and promoted in the monthly City Newsletter. Notice was provided to the Department of Land Conservation and Development on December 11, 2023. Notice of the proposed amendments were mailed to every property owner in city limits on December 18, 2023. The letter was sent to notify property owners that the City of Sandy is proposing land use regulations that may affect the permissible uses of their property. This notice was sent in accordance with Ballot Measure 56 (1998).

Goal 2 Land Use

8. Goal 2 establishes policies for a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions. The following policy is from the Sandy Comprehensive Plan:

Policy 7. Land development proposals shall be consistent with the Sandy Development Code, Municipal Code, and all adopted standards and enforcement codes of the City of Sandy. The burden of proof with regard to consistency with the applicable standards and codes lies with the prospective developer.

Findings: The proposed Clear and Objective code amendments will remove uncertainty surrounding permitting requirements and resulting administrative burdens while still maintaining desired and predictable community outcomes. The proposed amendments are consistent with Oregon Revised Statute 197.307 that requires all local governments provide for clear and objective standards, conditions, and procedures in a collective effort to address the housing crisis. The projected impacts of the proposed changes include

facilitating development of affordable housing in areas zoned for commercial use consistent with Senate Bill 8 and House Bill 3395, which will benefit Sandy residents over the longer term by providing a wider variety of housing choices. This will ensure that city development standards and requirements are consistent with State law and will have the long-term effect of providing housing options that meet the needs of all Sandy residents.

Goal 5 Open Spaces, Historic Resources, and Natural Areas

9. Goal 5 establishes policies for conservation of open space and protection of natural and scenic resources. The following policy is from the Sandy Comprehensive Plan:

Policy 7. Employ development regulations to preserve and protect open space and environmentally sensitive lands, integrate the natural environment of Sandy into project designs, minimize the creation of impervious surface, and discourage the unnecessary clearing of trees and other natural vegetation.

Findings: Adopting clear and objective standards will help protect steep slopes, wetlands, and creeks by clarifying regulations that protect the City's natural and scenic resources. Adoption of the amended code will assist the city's homeowners and builders to be better informed about the regulations when building in or near a Flood and Slope Hazard (FSH) overlay zone.

Goal 9 Economic Development

10. Goal 9 establishes policies to diversify and improve the economy of the state. In order to create a vital downtown which has mixed uses to serve the variety of Sandy area residents and visitors, the City adheres to the following policies from the Sandy Comprehensive Plan:

Policy 11. Adopt design guidelines to provide the framework for public and private improvements within the downtown area.

Policy 12. Allow permitted and conditional uses which meet the purposes of the central business district, and which are in scale and character to a traditional downtown business district.

Policy 13. Adopt zoning regulations which allow a mix of uses appropriate and desirable in the downtown area, including public/civic uses, service/retail uses, professional office uses, art galleries and limited residential development.

Findings: The proposed code amendments will continue to support the retention of existing businesses and allow for a flexible approach to the operational needs of the city's economic development base. The amendments also ensure that residential development in the downtown business district will be compatible with adjacent commercial activities.

Goal 10 Housing

11. Goal 10 establishes policies to provide for housing needs of the state. The following policies are from the Sandy Comprehensive Plan:

Policy 3. Encourage innovations in construction, funding, regulation, and siting of housing in order to provide well designed and energy efficient housing.

Policy 9. Assure that residential densities are appropriately related to site conditions, including slopes, potential hazards, and natural features.

Policy 10. Link housing density and location to reduce automobile travel by locating higher density housing near village centers, schools, and potential transit routes.

Findings: The City will continue to seek and support a variety of housing choices which is evident in the adoption and expansion of middle housing options in residential districts, and affordable housing in commercial zoning districts. The proposed text amendments bring clarity and consistency to existing standards related to multi-family and single-family development and replace discretionary language that can result in uneven enforcement or results not intended by the City's decision makers or serve to discourage development of these needed housing types. The proposed Clear and Objective text amendments are intended to remove uncertainty and administrative burdens resulting from the City's existing discretionary standards, in compliance with Goal 10 and ORS 197.307. Changes are intended to be as policy neutral as possible and are intended to maintain the standards and desired outcomes of the existing regulations, but in a manner that provides for more timely and predictable review.

Goal 12 Transportation

12. Goal 12 establishes policies to provide and encourage a safe, convenient, and economic transportation system. The following policies are from the Sandy Comprehensive Plan:

Policy 1. Support a pattern of connected streets, sidewalks, and bicycle routes to: a) provide safe and convenient options for cars, bikes, and pedestrians; b) create a logical, recognizable pattern of circulation; and, c) spread traffic over local streets so that collector and arterial streets are not overburdened.

Policy 3. Require connected streets that form pedestrian-scaled blocks, except where it is shown that topography, existing land ownership patterns, or other conditions preclude the creation of blocks.

Policy 6. Encourage the development of neighborhood parks or other public or private open spaces connecting short cul-de-sac streets or other local streets in order to provide neighborhood focal points.

Findings: These amendments are appropriate to various sections of the Development Code to address new goals and policies outlined in the TSP. These amendments directly follow and are updated based on the Transportation Planning Rule (“TPR,” OAR 660, Division 12). These amendments will have a positive impact on addressing transportation and land use decisions more accurately. All of the proposed amendments will have a positive impact on the City’s economy by addressing current transportation needs and improvements, further allowing the City to make better informed land use decisions on its residential and commercially zoned lands.

RECOMMENDATION

The Sandy Development Code is a legislative regulatory guidebook intended to regulate development and guide growth for the city of Sandy. However, development code also needs to be revised over time to respond to new case law and legislation. Staff believes that all the proposed amendments are in full compliance with all state statutes and administrative rules.

Staff recommends the Planning Commission review the proposed code amendments in Exhibit A and recommend approval to the City Council.