



STAFF REPORT

Meeting Type: City Council Meeting
Meeting Date: February 20, 2024
From: Kelly O’Neill Jr., Development Services Director
Patrick Depa, Senior Planner
Subject: Clear and Objective Code Audit (Land Use File No. 23-046 DCA)

DECISION TO BE MADE:

Whether to adopt Ordinance 2024-01, making code amendments as a result of the Clear and Objective Code Audit.

BACKGROUND / CONTEXT:

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 Municipal 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.

KEY CONSIDERATIONS / ANALYSIS:

The majority of the draft amendments in Exhibit A are related to clear and objective revisions for compliance with ORS 197.307. However, Exhibit A 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 that meets 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 Planning 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 (for example, 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.

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. 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. Findings related to these six statewide planning goals are in the Ordinance Findings in Exhibit B.
7. At the public hearing on January 22, 2024, the Planning Commission spent almost three hours reviewing the proposed code and recommended multiple revisions to the draft Development Code amendments. Most of the recommended changes were relatively minor. City staff and the consultant team discussed these changes and identified several additional related changes needed for consistency throughout the Code as detailed in Exhibit D.

RECOMMENDATION:

The Sandy Development Code is intended to regulate development and guide growth for the city of Sandy. However, the 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.

The Planning Commission reviewed the code amendments, made recommended modifications as detailed in Exhibit D and now incorporated in Exhibit A, and recommended approval to the City Council.

It is important to note that staff are continuing to make progress on other code amendment projects, including fine and enforcement procedure updates, backyard burning, and utility account management policies, among others.

SUGGESTED MOTION LANGUAGE:

"I move to approve the first reading of ordinance 2024-01."

LIST OF ATTACHMENTS / EXHIBITS:

- Ordinance No. 2024-01
 - Exhibit A. Proposed Municipal Code Modifications Incorporating Planning Commission Edits
 - Exhibit B. Ordinance Findings
 - Exhibit C. Email from Peggy Sheehan (submitted January 3, 2024)
 - Exhibit D. Modifications Summary from the Planning Commission
- Presentation Slides