Work Session WS

Milwaukie City Council

CITY OF MILWAUKIE

COUNCIL WORK SESSION

City Hall Council Chambers, 10501 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

AGENDA

OCTOBER 15, 2024

Council will hold this meeting in-person and by video conference. The public may come to City Hall, join the Zoom webinar, or watch on the city's YouTube channel or Comcast Cable channel 30 in city limits. **For Zoom login** visit https://www.milwaukieoregon.gov/citycouncil/city-council-work-session-358.

Written comments may be delivered to City Hall or emailed to ocr@milwaukieoregon.gov.

Note: agenda item times are estimates and are subject to change. **Page #**

1. **Stormwater Code Amendments – Discussion** (4:00 p.m.) **13**
   Staff: Peter Passarelli, Public Works Director

2. **Oregon Senate Bill (SB) 1537 Compliance – Discussion** (4:45 p.m.) **43**
   Staff: Laura Weigel, Planning Manager, and
   Vera Kolias, Senior Planner

3. **Adjourn** (5:15 p.m.)

Executive Session. After the work session Council will meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(i) to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice
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Executive Sessions
The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.

CITY OF MILWAUKIE

Memorandum

To: City Council
From: Joseph Briglio, Community Development Director
CC: Emma Sagor, City Manager
Date: October 15, 2024
Re: Community Development Department Monthly Update

Community Development, Economic Development, & Housing	Planning	Building	Engineering
▪ Economic Development ▪ Affordable Housing	▪ Comprehensive Plan Implementation ▪ Planning Commission ▪ Land Use/ Development Review	▪ September Review	▪ CIP ▪ Traffic/Parking Projects ▪ Right-of-Way Permits ▪ PIP ▪ Document Administration

COMMUNITY DEVELOPMENT/ECONOMIC DEVELOPMENT/HOUSING

Economic Development

Business Groups

- After years of local business association inactivity, there are a few groups building momentum.
    - The Business of Milwaukie – This group is casting a city-wide net to convene, advocate, and support business needs. There is a soft-launch event happening on November 1st from 4:00-8:00pm at Milwaukie Floral that will bring together residents, businesses, and city leaders.
    - Downtown Milwaukie Business Association – This group has been rebuilding its membership and mission as of late. They are tentatively planning for its first public meeting on the evening of October 30.

Downtown:

- O'Malley's Gym is open for business.

- The sale of the Collectors Mall, along with the adjacent store fronts, has closed. The new owner is actively soliciting tenants for the vacant spaces: See Lease Flyer Here

    - Community Development Staff have been in conversations with a number of businesses that are considering a lease of the available spaces once ownership has transitioned.

- The Collectors Mall will remain at its location for the foreseeable future as they still have an active lease with the new building owner.

- Good Measure, an artisanal grocer, has signed a lease at the northwest corner of Main and Jefferson Street. They are in the process of completing their tenant improvements.

- A Finnish Spa, SaunaGlo, has signed a lease for the spaces behind Good Measure that front SE Jefferson Street. They are in the process of completing their tenant and facade improvements.

- Historic City Hall: pFriem Beer and Keeper Coffee announced their new locations at Historic City Hall and the press has been very positive:

    - https://www.oregonlive.com/beer/2024/03/pfriem-family-brewers-to-open-first-portland-area-taproom.html

    - https://www.milwaukiereview.com/news/pfriem-brewpub-keeper-coffee-moving-into-historic-milwaukie-building/article_de5a218c-dfc6-11ee-baa6-1f2d56184cd2.html

    - https://pdx.eater.com/2024/3/15/24102162/pfriem-beer-milwaukie-taproom

    - https://newschoolbeer.com/home/2024/2/pfriem-family-brewers-old-milwaukie-city-hall-location

    - https://washingtonbeerblog.com/pfriem-family-brewers-a-taproom-is-coming-to-milwaukie-or/

    - https://www.pfriembeer.com/blog/article/pfriem-announces-milwaukie-taproom

    - The pFriem, Keeper, and Milwaukie flags are flying in front of the building.

    - Henry Point Development Is anticipating the majority of construction work to be complete by the end of the calendar year while touch ups, fixtures, and tenant preparation will occur in the new year leading up to the grand opening.

    - Grand Opening is scheduled for spring (April) 2025.

- The Libbie's property is currently for sale: https://www.loopnet.com/Listing/11056-11070-SE-Main-St-Milwaukie-OR/31458135/

- The former Chase Bank property is currently listed for sale - https://www.loopnet.com/Listing/Former-Bank-Attached-Building/31903098/ - the city has received a pre-application for a residential four story (44 units) building, but it is still very preliminary.

- Cloud Pine is officially closed as of August. It was always intended to be a three-year project for the owners. Staff have not heard from any businesses considering the space, as well as the spaces to the north.

- *Milwaukie Station*: All cart spaces are currently occupied.

- 1847 Food Park, a proposed food cart pod adjacent to New City Hall, received land use approval from the Planning Commission on September 10. The notice of decision can be found here - https://www.milwaukieoregon.gov/planning/dr-2024-001

***Milwaukie Marketplace*:**
- Pietro's Pizza has submitted building renovations plans for the old McGrath's Fish House. It is unclear when they intend on moving locations and opening.

***Enterprise Zone*:**
- Portland Polymers, a plastics recycler, is relocating to Milwaukie's north innovation area and recently received approval to take advantage of the North Clackamas Enterprise Zone tax incentives.

- Alpine Foods received approval and also recently completed its 600,000 sq/ft warehouse and cold storage expansion. It held its grand opening for the project on September 10.

***Urban Renewal Area Economic Development Programs*:**
- The Milwaukie Redevelopment Commission Citizen Advisory Committee (MRCCAC) convened in November and January to discuss the draft criteria and provide feedback on the emerging economic development programs.

- Staff presented the MRCCAC recommended program parameters on March 19th to the Milwaukie Redevelopment Commission and launched the programs in August. There is a dedicated webpage with application and overview materials here: https://www.milwaukieoregon.gov/economicdevelopment/economic-development-business-improvement-grants

- Staff have approved four applications, have three under review, and anticipate several more by the end of the year.

Affordable Housing

Sparrow Site:
- The city purchased the parcel ("main property") at the northeast corner of SE Sparrow Street and the Trolley Trail from TriMet for the purpose of land banking to support affordable housing several years ago. More recently, staff received a Metro Brownfields grant to support due diligence for the acquisition of 12302 SE 26th Avenue ("auxiliary property") from TriMet in order to help rectify access constraints to the main property. The city closed on the 12302 SE 26th Ave ("auxiliary") property and is considering next steps.

- Staff and Council discussed the proposed development goals on September 17, 2024, before pursuing a surplus property hearing and Request for Qualifications/Proposals.

***Coho Point*:**
- The Developer presented an update to the city council during its February 21, 2023, work session and requested a 12-month extension of the Disposition and Development Agreement (DDA) due diligence period because of extenuating circumstances involving supply chain and subcontractor timing issues related to the COVID-19 pandemic. The due diligence period was officially extended to March 31, 2024.

- Staff were notified on May 10, 2023, that Black Rock had submitted the CLOMR to FEMA. The review process typically takes several months, and FEMA has requested additional information from the applicant in September 2023, January 2024, and March 2024. The applicant has 90 days to address FEMAs comments and resubmit. In order to allow for the completion of the CLOMR/FEMA process, the City agreed to a fourth due diligence extension of September 30, 2024.

- Black Rock is in the final stages of the CLOMR/FEMA process and has requested three additional months of extension to the due diligence period, through December 31, 2024.

***Construction Excise Tax (CET) Program*:**

- The CET Program was established by the city council in 2017 and codified within chapter 3.60 (Affordable Housing Construction Excise Tax) of the municipal code. The CET levy's a one percent tax on any development over $100,000 in construction value. In example, a property owner who is building an addition that has an assessed construction value of $100,000 would have to pay $1,000 in CET to the city. As development continues throughout the city, the CET fund increases in proportionality.

- The city released its inaugural competitive bid process for CET funds through a formal Request for Proposals (RFP). This resulted in Hillside Park Phase I being awarded $1.7M (requested $2M) and the Milwaukie Courtyard Housing Project (Now called Milwaukie Shortstack) with $300K (requested $600K).

- On March 7, 2023, the city council authorized the city manager to execute the necessary grant agreements in the amounts listed above. The grants agreements for both projects have been signed and executed, and initial funding disbursements have occurred. Staff will now work with the applicants to ensure that their projects meet the conditions for funding.

PLANNING

Comprehensive Plan Implementation

- Neighborhood Hubs: Following a series of public workshops and an online survey, planning and community development staff moved forward with proposed code amendments and an economic development toolkit for the Neighborhood Hubs project. Council approved the Phase 2 code amendments on August 6. Staff now turns to a potential Phase 3 with a scheduled work session with Council on November 5.

Transportation Systems Plan (TSP)

- The TSP kicked off in October 2023. To date, the Technical and Advisory Committees have each met five times. Most recently, the committees reviewed the existing conditions of the city's transportation network. Member of the Advisory Committee met on Saturday, September 28th to collect sidewalk data on selected streets throughout the city. The Advisory Committee will meet next on November 21. Next steps include analyzing the gaps and needs in our transportation network for all modes of travel.

Planning Commission

- DR-2024-001, VR-2024-002: A Type III application to establish a food park at 1915-1925 SE Scott St. The proposal includes areas for food carts/trucks; a covered, open-air seating area; and a permanent multi-story taproom building with a bar, indoor and roof-deck seating areas, and restrooms. The existing parking area will be improved and maintained to serve the site. The proposal requires downtown design review and a variance to minimum FAR in the DMU zone. The Planning Commission hearing was held on June 11 where they took a vote to deny the application and to continue the hearing to August 13 to review findings for denial. At the request of the applicant, the Commission voted on August 13 to re-open the record for verbal and written testimony by any party and to continue the hearing to September 10. At the hearing on September 10, the Planning Commission voted 3-2 to approve the applications. The NOD was issued on September 11. The appeal period runs through September 26. No appeals were filed.

- HR-2024-003: A Type III historic resources review for a proposed addition to the property located at 9712 SE Cambridge Ln, which is listed as a Significant historic resource. The application was deemed complete and the Planning Commission public hearing has been tentatively scheduled for December 10.

- Natural Resources code update: Planning Commission has held three work sessions focused on:
    - coordination with the residential tree code
    - proposed updates to the Water Quality Resource standards
    - natural resource mapping issues

  A work session is scheduled with City Council on November 19 to discuss the same topics.

- CU-2024-001: A Type III application for a Conditional Use permit to use a single-detached dwelling at 11932 SE 35th Ave as a vacation rental. The property is currently used as the owner's primary residence. A public hearing with the Planning Commission was held on October 8 where the Commission unanimously approved the application. The appeal deadline is October 24, 2024.

- HR-2024-002: A Type III historic resources review for a proposed horizontal addition and comprehensive exterior modifications to a dwelling listed as significant on the city's historic resource list. The application was deemed complete, and the Planning Commission public hearing has been tentatively scheduled for December 10.

Land Use/Development Review[1]

- MLP-2024-002: A Type II application for a two-lot partition of the property at 11004 SE Stanley Ave. The proposed partition would retain the existing house on one parcel and create a back-lot parcel that would be developed with middle housing (four detached units). The application was referred for review by other departments and agencies, and public notice was sent as required. No comments have been received to date and issuance of a notice of decision to approve is anticipated by October 11.

- VR-2024-007: A Type II variance application to allow a 118 sf addition to an existing detached garage. A portion of the garage, along with the addition, is proposed to be converted into an ADU, with the remaining area to be used as a garage. A variance is required because the footprint of the structure would exceed 800 sq ft. The comment period ended on October 8. Staff is preparing a Notice of Decision to approve with conditions.

[1] Only land use applications requiring public notice are listed.

BUILDING

Permit data for	September	FY to Date:
New single-family houses:	2	2
New ADU's	0	1
New Solar	6	33
Res. additions/alterations	8	20
Commercial new	0	2
Commercial Alterations	1	49
Demo's	0	2
Cottage Clusters	0	0
Total Number of Permits issued: (includes fire, electrical, mechanical, plumbing, and other structural)		430
Total Number of Inspections:		1028
Total Number of active permits:		1046

ENGINEERING

Capital Improvement Projects (CIP):

CIP 2018-A13 Washington Street Area Improvements
Summary: This project combines elements of the SAFE, SSMP, Water, Stormwater, and Wastewater programs. SAFE improvements include upgrading and adding ADA compliant facilities along 27th Ave, Washington St, and Edison St. Street Surface Maintenance Program improvements are planned for Washington Street, 27th Avenue, and Edison Street. The Spring Creek culvert under Washington Street at 27th Avenue will be removed, and a new structure added. The water system along Washington Street will be upsized from a 6" mainline to an 8" mainline. The stormwater system along Washington Street will be upsized from 18" to 24" storm lines. The project is being designed by AKS Engineering and Forestry.

Update: Construction is ongoing. The crew is working on replacing water service lines, meters, and hydrants. SE Washington sidewalks, driveways, and ADA ramps in construction now from 27th to 28th. Asphalt grind and inlay in this section coming towards the end of October. SE 27th Avenue is complete with sidewalks, driveways, and grind and inlay. Sanitary pipe bursting is complete. The existing culvert under Washington has been slip lined with a new pipe.

CIP 2016-Y11 Meek Street Storm Improvements
Summary: Project was identified in the 2014 Stormwater Master Plan to reduce flooding within this water basin. The project was split into a South Phase and a North Phase due to complications in working with UPRR.

Update: Construction has started back up along the railroad tracks primarily between SE Kelvin St and SE Roswell St. Crews will begin at SE Kelvin St and work there way North to SE Roswell St first adjusting sewer lateral conflicts with future storm pipe. Then they will start installing the storm water main.

CIP 2022-W56 Harvey Street Improvements
Summary: The project includes water improvements and stormwater improvements on Harvey Street from 32nd Avenue to the east end, on 42nd Avenue from Harvey Street to Johnson Creek Boulevard, 33rd Avenue north of Harvey Street, 36th Avenue north of Harvey Street, Sherry Street west of 36th Avenue, 41st Street north of Wake Court, and Wake Court. Sanitary sewer work will be done on 40th Avenue between Harvey Street to Drake Street. The project also includes the installation of an ADA compliant sidewalk on Harvey Street from 32nd Avenue to 42nd Avenue and 42nd Avenue from Harvey Street to Howe Street. Roadway paving will be done throughout the project area.

Update: Century West Engineering was contracted for the design in July 2023. The project is currently at 90% design. The Public Works department has reviewed the 60% design and submitted comments to Century West Engineering. Another open house will be scheduled after completion of design.

CIP 2021-W61 Ardenwald North Improvements
Summary: Project includes street repair on Van Water Street, Roswell Street, Sherrett Street, 28th Avenue, 28th Place, 29th Avenue, 30th Avenue, and 31st Avenue with a shared street design for bicycles, pedestrians, and vehicles. The sidewalk will be replaced on the north side of Roswell Street between 31st and 32nd Avenue. Stormwater catch basins in the project boundary will be upgraded, the water system will be upsized on 29th Avenue, 30th Avenue, 31st Avenue, and

Roswell Street, and there will be wastewater improvements on 28th Avenue, 29th Avenue, and 31st Avenue to address multiple bellies and root intrusion to reduce debris buildup.

Update: The project is in its open bid phase. Addressing contractor questions at this time. Bid closes October 24th.

CIP 2022-A15 King Road Improvements
Summary: King Road (43rd Avenue to city limits near Linwood Avenue) SAFE/SSMP Improvements will replace existing sidewalk and bike lane with a multi-use path, improve stormwater system, replace water pipe, and reconstruct roadway surface.

Update: Additional storm improvement scope was added to the project. Existing condition investigations have been conducted. Project is working towards a 90% design to be submitted in October.

Waverly Heights Sewer Reconfiguration
Summary: Waverly Heights Wastewater project was identified in the 2010 Wastewater System Master Plan. The project may replace approximately 2,500 feet of existing clay and concrete pipe.

Update: Authorization for the design contract with Stantec was approved by the Council on August 1, 2023,and the design effort was kicked off in early October of 2023. The design team completed 30 percent design in January 2024. and the City reviewed Stantec's 60 percent design in July of 2024. Project is working on the 90% design.

Monroe Street Greenway
Summary: The Monroe Street Greenway will create a nearly four-mile, continuous, low-stress bikeway from downtown Milwaukie to the I-205 multi-use path. Once complete, it will serve as the spine of Milwaukie's active transportation network connecting users to the Max Orange Line, Max Green Line, Trolley Trail, 17th Avenue Bike Path, I-205 path, neighborhoods, schools, and parks. Funding grants through ODOT and Metro will allow the city to complete our 2.2-mile section of the Monroe Greenway from the Trolley Trail to Linwood Ave.

Segment Update:
East Monroe Greenway (37th to Linwood): Staff have come to an agreement with ODOT and contracted CONSOR for the design. A Kick-off meeting has occurred, and the site is being surveyed. An Open-House was hosted on February 29th for all of the Monroe Greenway, ODOT's Highway-224 project, the City's TSP, and Kellogg Creek Restoration and Community Enhancement Project. The City received a lot of positive feedback for moving forward with the project and requests for speed mitigation and intersection controls. Feedback from the February open house has been incorporated into the design. Another Open-House specific to the east segment was hosted September 12 at Wichita Park.

Monroe Street & 37th Avenue (34th to 37th): This segment is complete. It was constructed as part of the private development of the 7 Acres Apartments.

Western Monroe Greenway (Downtown to 34th): The city has come to an agreement with ODOT on an IGA that will transfer $1.55 M in STIP funding to the city to construct this segment of the Monroe Street Greenway. The City has signed the IGA and is awaiting an ODOT signed copy. City staff has also contracted with 3J Consulting to negotiate work at the railroad crossings. The city will also contract a survey team to aid 3J.

Monroe Street & Highway-224 Intersection: This project has now been combined with a larger project which will mill and overlay Highway-224 from 17th Avenue to Rusk Road. The city will design and replace the underlying water main by October 2024 and ODOT will proceed to construction in the Fiscal Year 2026. The water main bid package is in finance review before being posted. An Open-House was hosted on February 29th for all of the Monroe Greenway, ODOT's Highway-224 project, the City's TSP, and Kellogg Creek Restoration and Community Enhancement Project. The City received concerns regarding the development of Highway-224 and Monroe Greenway pushing traffic from Monroe Street onto Penzance Street.

Kellogg Creek Restoration and Community Enhancement Project
Summary: Project to remove the Kellogg Creek dam, replace the McLoughlin Blvd. bridge, improve fish passage, and restore the wetland and riparian area. City of Milwaukie staff are part of the project Leadership Team, Core Technical Team, and the Technical Advisory Committee. The Leadership Team and Core Technical Team both meet monthly. In addition to city staff, these groups include staff from North Clackamas Watershed Council (NCWC), Oregon Department of Transportation (ODOT), and American Rivers. The Technical Advisory Committee (TAC) for the Kellogg Creek Restoration & Community Enhancement Project involves all collaborative partners that include the Confederated Tribes of the Warm Springs Indian Reservation of Oregon, the Confederated Tribes of Grand Ronde, Clackamas Water Environment Services, Metro, North Clackamas Parks and Recreation District, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Division of State Lands, the Native Fish Society, and the Natural Resources Office of Governor.

Update: The Summer 2024 Geotechnical and Sediment Sampling/Evaluation Study is complete as of September 30th. Additional details and updates are available at the project website: https://www.milwaukieoregon.gov/kellogg/project-status

Traffic / Parking Projects, Issues
The City is updating parking regulations for 3 parking lots in Downtown. These lots include the lot behind Old City Hall, the log across the street from Old City Hall (Main and Harrison) the lot at McLoughlin and Jackson. This project will convert these lots to 2 hr parking except by permit.

The City is also updating school zone signage around the Cascade Heights Public Charter School, (formerly Hector Campbell Elementary School).

Right-Of-Way (ROW) Permits (includes tree, use, construction, encroachment)
Downtown Trees and Sidewalks
Update: Staff have a contract with AKS; working on what type of design works best now and in the future with both the trees and sidewalks & curbs.

Private Development – Public Improvement Projects (PIPS)

1600 Lava Drive
Update: This development on Lava drive will add a new 13-unit multi-family building. Public improvements for this project include a new sidewalk, an ADA ramp, and minor street widening. Building permits have been issued and on-site construction has begun. Public improvement site plans are currently under review.

Hillside
Update: Hillside currently has issued permits for the first building and public improvements to be constructed under phase I. The remaining two buildings and public improvements to be constructed during this phase are still under review. City staff is meeting with the developer on a weekly basis to ensure the project moves smoothly. Public improvements for this development include new roadway alignment, new sidewalk, ADA ramps, and new asphalt paving. Work has started on the first building and associated public improvements.

Seven Acres Apartments (formerly Monroe Apartments) – 234 units
Update: Seven Acres has completed construction and is currently occupied. Public improvements for this development included a new bike path and sidewalk from Oak Street and Monroe Street to 37th Avenue and Washington Street. Public improvements are currently under warranty and will receive a final inspection after a one-year period before shifting over to the City for ownership.

Henley Place (Kellogg Bowl redevelopment)- 175 units
Update: Construction is complete, and the building is occupied.

Elk Rock Estates – 5 lot subdivision at 19th Ave & Sparrow St.
Update: All public improvements have been completed; the project is in the punch-list and cleanup phase. The land use entitlements have recently expired, so they will need to go back through the process to build units. Recently, a new stakeholder for the project expressed interesting in wrapping up the ROW improvements – nothing furthering has occurred since this verbal conversation.

Shah & Tripp Estates – 8-lot subdivision at Harrison Street and Home Ave.
Update: Construction for the ROW improvements have begun. So far they have completed earth work, installed sewer laterals and poured the curb. Contractor is currently working to install and test new water main. Completing this section of water main will loop our system which is a net positive.

Jackson / 52nd – 5-unit development.
Update: Project is nearing completion. The sewer main extension has been installed and tested. Per a development agreement, the developer repaved Jackson between Home Ave. and 52nd Ave in July 2024. The developer will be reimbursed for paved areas outside of their responsibility. All work is expected to be completed by August 2024. Work is complete. Engineering is working on releasing the performance bond and acquiring a maintenance bond.

Walnut Estates

Update: Walnut estates has completed the majority of their construction and is currently in the final punch-list and cleanup phase. Public improvements for this development include new sidewalk, storm water facilities, and a new asphalt roadway. Once the final work is completed, this development will enter the one-year warranty period.

Bonaventure Senior Living – 170-units
Update: ROW permit has been issued and public improvements are currently under construction.

Document Administration
Plans
Summary: WSC is preparing the Stormwater System Plan.

CITY OF MILWAUKIE

WS 1. 10/15/24

OCR USE ONLY

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Date Written: Oct. 3, 2024

Reviewed: Peter Passarelli, Public Works Director

From: Katie Gavares, Climate & Natural Resource Manager

Subject: **Stormwater Code Amendments**

ACTION REQUESTED

Council is asked to review and provide feedback on proposed amendments to the stormwater management code and erosion control code.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

November 15, 2022 : Staff presented revisions to the stormwater code during Council's deliberations on the climate fee.

December 6, 2022: Council adopted revisions to the stormwater code related to nature-based stormwater facilities and the use of stormwater funds on private property.

ANALYSIS

Under the federal Clean Water Act (CWA) and Oregon Revised Statute (ORS) 468B.050, the Oregon Department of Environmental Quality (DEQ) issued the city a renewed National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase I Discharge Permit, effective October 1, 2021.

DEQ regulates stormwater runoff from the city through the MS4 NPDES Permit No. 101348, issued to Clackamas County and its co-permittees. Clackamas County co-permittees include Milwaukie along with the cities of Lake Oswego, Gladstone, West Linn, Oregon City, Wilsonville, Happy Valley, Johnson City, Rivergrove, the Oak Lodge Water Services District, Clackamas County Water Environment Services (WES), and Clackamas County.

As a condition of 2021 NPDES, the co-permittees are required to adopt, update, and maintain adequate legal authority through ordinance(s), code(s), interagency agreement(s), contract(s), and/or other mechanisms to control pollutant discharges into and discharges from its MS4 and to implement and enforce the conditions of this permit, to the extent allowable pursuant to the respective authority granted under state law. If existing ordinances or regulatory mechanisms are insufficient to meet the criteria required by this permit, the co-permittees must adopt a new ordinance by December 1, 2024.

A staff review of the Milwaukie Municipal Code (MMC) determined that the city needs to revise the code, specifically Chapter 13.14 Stormwater Management and Chapter 16.28 Erosion Control, to meet the requirements of the permit related to escalating enforcement. The permit requires the implementation of a written escalating enforcement and response procedure for all qualifying construction sites for construction site runoff control. In Milwaukie's case this applies to any site that has disturbed an area of 500 square feet or more. The procedure must

address repeat violations through progressively stricter responses, as needed, to achieve compliance. The city reviews all site plans for new and redevelopment using an internal review checklist for compliance with the city's Erosion Control Standards, which define requirements for erosion control plans including the implementation of structural and non-structural best management practices (BMPs) for all sites disturbing an area over 500 square feet.

Staff engaged with consultants at Water Systems Consulting Inc. (WSC) and Parametrix to provide recommended revisions that were consistent with the MMC and would meet the permit requirements. Staff have proposed amendments to the stormwater code for consideration and adoption. The recommended changes meet the requirement of the permit, added the required escalating enforcement language to both Chapters 13.14 and 16.28, added additional language concerning violations, added definitions to better align definitions in the code with permit language and consolidated the location of violations and penalties within the appropriate section of each chapter.

After incorporating any feedback from Council, staff will return in November with a revised code for adoption.

BUDGET & WORKLOAD IMPACTS
Not applicable.

CLIMATE IMPACT
The proposed amendments align with the city's Climate Action Plan (CAP) and are consistent in ensuring protection of surface water quality in an urban environment.

EQUITY IMPACT
The proposed amendments are primarily technical changes designed to ensure compliance with state and federal regulatory requirements. There are no direct impacts anticipated on underrepresented or marginalized communities as part of this specific action.

COORDINATION, CONCURRENCE, OR DISSENT
The proposed amendments have been coordinated with public works staff and code enforcement staff.

STAFF RECOMMENDATION
Staff recommends that Council provide feedback on the proposed code revisions.

ALTERNATIVES
Not applicable.

ATTACHMENTS
1. Erosion control amendments
2. Stormwater code amendments

CHAPTER 16.28
EROSION CONTROL

Note: Prior ordinance history; Ord. 1718

16.28.010. GENERAL POLICY.

A. The policies of this chapter shall apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.

B. Temporary and permanent measures for all construction projects shall be required to lessen the adverse effects of erosion and sedimentation. The owner or his or her/her agent, contractor, or employee, shall properly install, operate, and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all lands within the City of Milwaukie.

C. Nothing in this chapter shall relieve any person from the obligation to comply with the regulations or permits of any federal, State, or local authority.

D. Maintenance and repair of existing facilities shall be the responsibility of the owner of record.

E. Erosion, sedimentation, and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion shall be prevented.

F. No visible or measurable erosion shall leave the property during construction or during activity described in subsection E above. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainage ways, or wetlands impacted by a project. For the purposes of this chapter "visible and measurable erosion" includes, but is not limited to:

1. Deposits of mud, dirt, sediment, or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion;

2. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site, and/or;

3. Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.

G. Dust and other particulate matters containing pollutants can settle on property and be carried to waters of the state though rainfall or other means. Dust shall be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

1. Sprinkling haul and access roads and other exposed dust-producing areas with water;

2. Establishing temporary vegetative cover;

3. Placing wood chips or other effective mulches on vehicle and pedestrian use areas;

4. Use of covered haul equipment; and/or

5. Prewetting cut and borrow area surfaces. (Ord. 1899 § 1, 2002)

16.28.020. EROSION CONTROL PERMIT AND EROSION CONTROL PLANS—APPLICABILITY—CONFORMANCE.

A. Definitions.

"Erosion control permit" means the official approval issued by the City that demonstrates compliance with this chapter for activities described in the application form, erosion control plan, and related materials submitted pursuant to this chapter.

"Erosion control plan" means all documents, maps, plans and other information specified in Section 16.28.030 and submitted in association with an application for an erosion control permit.

B. An erosion control plan that meets the requirements of Section 16.28.030 is required prior to any approval of an erosion control permit.

C. An erosion control permit is required as follows:

1. Prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils exceeding 500 square feet.

2. For disturbed areas or exposed soils less than 500 square feet, where the City has determined that site conditions may result in visible and measurable erosion and where the City has provided written notice of the requirement to obtain an erosion control permit to the property owner. Upon notice by the City, all work shall cease pending approval of an erosion control permit and installation of approved erosion control measures.

3. For any lot that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit shall be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.

D. An erosion control permit shall not be issued for activities on lots that include natural resources regulated by Section 19.402, where the site activity has not been authorized, or is not exempt under the provisions of Milwaukie Zoning Ordinance Section 19.402 Natural Resources as determined by the Planning Director. This provision does not apply where the erosion control permit is associated with correction of a violation of the City Code or as necessary for public safety, or the protection of property or water quality.

E. Timing

Approval of the erosion control permit is required prior to the following, whichever comes first:

1. Issuance of grading permits, building permits, and approval of construction plans for subdivision; or

2. Placement of fill, site clearing, land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which disturbs or exposes soil.

F. Erosion control measures set forth in any approved erosion control plan shall be implemented and maintained on the site until the date set forth in the plan, or the amended date as necessary for the establishment of final landscaping. The City may allow for the removal of erosion control measures at an earlier date if erosion control is assured by established landscaping.

(Ord. 1899 § 1, 2002; Ord. 2036 § 3, 2011)

16.28.030. CONTENTS OF EROSION CONTROL PLAN AND GENERAL REQUIREMENTS.

A. Erosion control plans ~~shall~~ must include a description of erosion control methods that are adequate to ensure that runoff siltation and pollutants from the grading, site clearing, or construction are contained onsite during the period of activity on the site until the final landscaping is sufficiently established to control erosion. Each plan ~~shall~~ must contain a date which is the estimated ending date for maintaining erosion control measures. That date may be extended if final landscaping has not been sufficiently established to control erosion. Plan submittal requirements, and recommended erosion control measures, are included in the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/ Sedimentation Control Plans (August 1991) (Guidance Handbook), which is hereby adopted in total as part of this chapter. Copies of the Guidance

Handbook are available for a fee at the City Public Works Department.

B. At a minimum the Erosion Control Plan ~~shall~~ must include:

1. Identification of potential sources of stormwater pollution at the construction site

2. The stormwater controls ~~methods and/or facilities to be used~~ to prevent erosion and pollution created from the development both during and after construction (site-specific considerations ~~shall~~ must be incorporated);

3. Limits of clearing by flagging boundaries in the field before starting site grading or construction (staging areas ~~shall~~ must be included);

4. An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from stormwater runoff;

5. A drainage plan during construction;

6. Existing contours as well as all sensitive areas, creeks, streams, wetlands, open areas, and areas of natural riparian vegetation pursuant to Chapter 322; and

7. A description of historic localized flooding problems resulting from surface water runoff, FEMA, or flooding problems known to the community or the local jurisdiction.

C. A site plan prepared by an Oregon registered engineer ~~shall be~~ is required for sites with disturbed area of 5 acres or greater.

D. The Erosion Control Plan must be kept on site and made available during site inspections or upon request.

E. Erosion Control Plans must be maintained and updated as site conditions change or as directed by the City.

F. Additional measures required by subsection C above may include 1 or more of the following:

1. Limited area cleared at any one time;

2. Additional drainage requirements during construction;

3. Filtering or treatment of runoff;

4. Additional water quality measures;

5. Additional erosion control to cover portions of the site;

6. Maintaining some existing vegetation adjacent to water features, such as creeks, streams, and wetlands or areas of natural riparian vegetation

pursuant to Chapter 322;

7. Additional facilities to reduce volume and velocity of water runoff;

8. If there are no workable alternatives, limit clearing, and grading in some areas between November 1st and April 30th; and

9. Additional measures required by the Guidance Handbook.

G. All construction activities disturbing 5 or more acres ~~shall~~ must obtain an NPDES erosion control permit for construction activities issued by the City of Milwaukie.

(Ord. 1899 § 1, 2002)

16.28.040. APPROVAL PROCESS—FEES.

Fees to cover the cost of erosion control plan review, site inspections, and the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/Sedimentation Control Plans (August 1991) will be set by City Council resolution.

(Ord. 1899 § 1, 2002)

16.28.050. MAINTENANCE AND AMENDMENT OF INADEQUATE MEASURES.

The applicant shall maintain all facilities required by an approved erosion control plan so as to assure their continued effectiveness during construction or other permitted activity. If the facilities and techniques approved in an erosion control plan are not effective or sufficient as determined by the City's Site Inspector, the permittee shall submit a revised plan within 3 working days of written notification by the City. In cases where erosion is occurring, the City may require the applicant to implement interim control measures prior to submittal of a revised erosion control plan and without limiting the City's right to undertake enforcement measures. Upon approval of the revised plan by the City, the permittee shall immediately implement the revised plan.

(Ord. 1899 § 1, 2002)

16.28.060. WORK IN PROGRESS.

Permittees or property owners for any site activities which were underway on the effective date of the ordinance codified in this chapter, may be required to prepare an erosion control plan for approval pursuant to this chapter. If the City determines that an erosion control problem exists, and requests an erosion control plan, ground work on the site shall cease pending approval of the plan and installation of approved erosion control measures. The provisions of this section shall apply only until final landscaping on the site is sufficiently established to control erosion.

(Ord. 1899 § 1, 2002)

16.28.070. PERFORMANCE.

The City may require the applicant to submit a bond, cashier's check, or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this chapter. Upon default, the City may perform work or remedy violations and draw upon the bond or fund. If the City does not require a bond and the developer does not perform the erosion control plan in whole or in part, the City may, but shall not be obligated to, perform or cause to be performed corrective work and charge the developer. Such amount shall bear interest at 9% per annum and shall be a lien upon the property foreclosable in accordance with ORS Chapter 88.
(Ord. 1899 § 1, 2002)

16.28.080. EROSION CONTROL CERTIFICATION.

A. Developers/contractors of building activities requiring erosion control permits who have a certified individual on staff with authority over erosion control and who is responsible for erosion control of the site, are eligible for a discount of their erosion control fees in accordance with the City fee schedule. On large or complex sites, the City may require an individual certified in erosion control to be on site at all times. Violations of this title that result in enforcement procedures described in Section 16.28.110, will result in revocation of the certification and require payment of the full erosion control fee. Recertification is required following erosion control violations resulting in enforcement actions. If certification is revoked, there may be additional inspection fees.

B. Certification shall involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction shall be required every 2 years.
(Ord. 1899 § 1, 2002)

16.28.090. INSPECTION.

The erosion control measures shall be installed by the owner or his or her representative and shall be inspected by the City prior to the start of any excavation work.
(Ord. 1899 § 1, 2002)

16.28.100. DEPOSIT OF SEDIMENT.

No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock, or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system which drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into the road/street

or any part of the storm or surface water system without erosion control measures installed to the satisfaction of the City, and any such action shall be an additional violation.
(Ord. 1899 § 1, 2002)

16.28.110. ENFORCEMENT—VIOLATION—PENALTY.

A. Enforcement Procedures

For any violation of MMC Chapter 16.28, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 16.28, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

a. The name and address of the applicant or the responsible person;

b. The address or other description of the site where the violation is occurring;

c. A statement specifying the nature of the violation;

d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 16.28;

e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The type and severity of pollution discharged will inform the date by which compliance is required;

f. A statement of the penalties that may be assessed; and

g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 16.28 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Repeat or Ongoing Violations

Not withstanding other provisions in this Section 16.28.110, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply
   In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 16.28 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

~~A. The Engineering Director or designee shall enforce the provisions of this chapter.~~

~~B. Beginning or continuing site-clearing, grading or construction activities without an approved erosion control plan required by this chapter constitutes a violation of this chapter. Failure to implement the erosion control measures set forth in the approved erosion control plan constitutes a violation of this chapter. No building shall be certified for occupancy if the property is deemed to be in violation of this chapter. Any person convicted of violating this chapter shall be punished by a fine of not more than $300.00. Each day that such violation exists shall be deemed a separate violation of this chapter.~~ (Ord. 1899 § 1, 2002)

16.28.120 Violations and Penalty

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.070.

C. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than $1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations. Each day on which a violation occurs or continues is a separate offense.

CHAPTER 13.14
STORMWATER MANAGEMENT

13.14.010. PURPOSE.

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that nature-based and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility. (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.020. DEFINITIONS.

"Best Management Practices (BMPs)" means schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs are also treatment requirements, operating procedures, and practices to control runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storages.

"Chronic Illicit Discharges" means continuous or repeated illicit discharges to an MS4 potentially resulting from sanitary/wastewater connections to an MS4, sanitary/wastewater inflows into an MS4, unpermitted industrial wastewater discharges to the MS4, or other types of illegal dumping or poor housekeeping practices upstream from an outfall where irregular flows, color, smell, or other monitoring parameters indicate an issue that may need repeat investigations over time to ensure cross connections or illegal dumping are remedied. Chronic illicit discharges may not be long-term and ongoing as in the case of illicit connections that can be stopped easily. Chronic illicit discharges may be defined by inconclusive findings of outfall investigations indicating pollutant discharge or repeated reports by members of the public that have not been traced back to a definite source.

"City" means the City of Milwaukie, a municipality, and its authorized employees.

"City council" means the City Council of Milwaukie.

"Customer" means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name.

"Developed" means an area which has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

"Discharge" means any addition of any "pollutant" or combination of pollutants

to "waters of the state" from any "point source," or any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the state from surface runoff, which is collected or channeled by humans; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Equivalent service unit (ESU)" means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City's stormwater system which is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to 2,706 square feet of impervious surface area.

"Illicit Discharge" means any discharge to the City's storm sewer system that is not composed entirely of stormwater, except discharges permitted by a NPDES permit or other state or federal permit, or otherwise authorized.

"Impervious surface" means any surface resulting from activities that prevents the infiltration of water or results in more runoff than in undeveloped conditions. Common ~~that hard surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions.~~ impervious surfaces may include, but are not limited to, building ~~rooftops~~ roofs, traditional concrete~~,~~ or asphalt paving on walkways, patios, driveways, parking lots, gravel lots and roads, and packed earthen material. ~~or storage areas, trafficked gravel, and oiled, macadam, or other surfaces which similarly impede the natural infiltration or runoff of stormwater.~~

"Improved premises" means any area which the ~~Public Works Director~~ Manager determines has been altered such that the runoff from the site is greater than that which could historically have been expected. Improved premises do not include public roads under the jurisdiction of the City, County, State or federal government.

"Manager" means the City Manager or designee ~~of the City stormwater management system~~.

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyance, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are (i) owned or operated by a State, city, town, county, , or other public body having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, that is (ii) designed or used for collecting or conveying stormwater (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works as defined at 40 CFR §122.2.

"National Pollutant Discharge Elimination System (NPDES)" means the national

program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of Clean Water Act [40 CFR §122.2].

"One- or two-family residential" means an area which is improved with one or two attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City's utility billing system.

"On-site mitigation control system" means a stormwater drainage facility that ~~which the Public Works Director has determined~~ prevents the discharge, or substantially reduces the discharge, of stormwater or nonpoint source pollution into a receiving water or public stormwater system facility.

"Person responsible" means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

"Pollutant" means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewerage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water.

"Public works standards" mean the City of Milwaukie Public Works Standards and the referenced City of Portland Stormwater Management Manual that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

"Stormwater" means ~~water from~~ that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed stormwater control infiltration facility~~, surface or subterranean water from any source, drainage, and nonseptic wastewater~~.

"Stormwater service" means the operations of the City's stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City's service area.

"Stormwater system" means any manmade or nature-based structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including, but not limited to, pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, rain gardens, vegetated swales, permeable pavement, green roofs, urban forest canopy, tree trenches, rainwater harvesting, green streets and their appurtenances. Stormwater system does not include the Willamette River.

"Street wash water" means water that originates from publicly financed street

cleaning activities consistent with the City's National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

"Toxic substances" mean any chemical listed as toxic under Section 307(a)(1) of the Federal Clean Water Act (CWA) or Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA).

"Undeveloped" means any area which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.
(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.025. REGULATIONS AND REQUIREMENTS.

A. Compliance with ~~Industrial~~ NPDES Stormwater Permits

Any ~~industrial~~ person or entity responsible for any discharge ~~discharger, discharger associated with construction activity, or other discharger~~ subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, ~~shall~~ must comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the Manager ~~of the City stormwater management system~~ prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and Federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, ~~shall~~ must comply with all applicable federal, State, and local laws, including Section 19.402 Natural Resources. Compliance with the requirements of this chapter ~~shall~~ in no way substitutes for, or eliminates the necessity for compliance with, applicable federal, State, and local laws.

C. Stormwater Management Document

The Manager must administer this Chapter 13.14 and may furnish additional policy, criteria, and information, including specifications and procedures for implementing the requirements of this chapter. In the event of a discrepancy between the requirements of any stormwater management document and the code, the requirement that is most protective of water quality overrides all other requirements.

D. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto which are more stringent than any such applicable federal, State, or local requirement ~~shall~~ will prevail and ~~shall~~ be the standard for compliance by the connectors to and the discharges to the public stormwater system.

E. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Section 13.14.105.E General Discharge Prohibitions, on their sites; ~~shall~~ must prepare and submit to the Manager, at the Manager's request, an Accidental Spill Prevention Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

F. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons ~~shall~~ must:

1. Begin containment procedures;
2. Notify proper emergency personnel in case of an emergency;
3. Notify appropriate City and/or State officials regarding the nature of spill;
4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification requirements do not relieve the person of necessary remediation or enforcement action set forth in Section 13.14.115.

~~F. Requirement to Eliminate Illicit Connections~~

~~1. The Manager may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.~~

~~2. If, subsequent to eliminating a connection found to be in violation of the chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.~~

~~G. Requirement to Remediate~~

~~Whenever the Manager finds that a discharge of pollutants is taking place, or has taken place, which will result in, or has resulted in, pollution of stormwater or the public stormwater system, the Manager may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the standards established by the Manager, within a specified time.~~

~~H. Requirement to Monitor and Analyze~~

~~Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; shall bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.~~

G. Stormwater Treatment

The quality of stormwater leaving the site after development ~~shall~~ must be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development ~~shall~~ must be designed, installed, and maintained in accordance with the Public Works Standards.

2. Land use activities of particular concern as pollution sources ~~shall~~ must implement additional best management practices for pollution control

including, but not limited to, those best management practices specified in the Public Works Standards.

3. Development in a watershed that drains to streams with established total maximum daily load (TMDL) limitations; as provided under the Clean Water Act, Oregon Law, Administrative Rules, and other legal mechanisms; ~~shall~~ must assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

H. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; ~~shall~~ must be designed and constructed to meet the Public Works Standards.

2. Except as permitted by the ~~Engineering Director~~ Manager, as provided by the Public Works Standards, on-site mitigation facilities ~~shall~~ must be located on private property and ~~shall~~ may not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.

3. Except as permitted by the Manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities ~~shall~~ must be privately owned, operated, and maintained. Maintenance responsibility ~~shall~~ must include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection ~~shall be~~ is subject to City approval.

4. Maintenance as required by the Public Works Standards ~~shall~~ must be specified in an operation and maintenance plan submitted to and approved by the Manager prior to issuance of a notice to proceed with public improvements. Prior to the time of project acceptance, the developer or applicant ~~shall~~ must enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a memorandum of agreement ~~shall~~ must be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.

5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual in effect on the date of the ordinance codified in this chapter is a violation.

(Ord. 2013 § 1, 2010; Ord. 2025 § 3, 2011; Ord. 2036 § 3, 2011; Ord. 2223 § 1, 2022)

13.14.030. REQUEST FOR SERVICE, INITIATION OF BILLING.

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system ~~shall~~ will constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter.
(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.040. CHARGES FOR STORMWATER SERVICE.

A. Except as the charges may be reduced under subsection C of this section, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill ~~shall~~ must pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges ~~shall~~ must be paid by the person responsible for the property.

   The person required to pay the charge is hereafter referred to as the customer.

B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.

C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

   Any reduction given ~~shall~~ will continue until the condition of the property is changed or until the ~~Public Works Director~~ Manager determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/ hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.

E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the

City's groundwater resources.
(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.050. STORMWATER CHARGES—BILLING.

A. Charges for stormwater service supplied by the City to any customer ~~shall~~ must be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory Board ~~shall~~ must prepare and deliver a report and recommendation on rates to the City Council. The Committee ~~shall~~ must prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council ~~shall~~ must be added to and made a part of the billings for water and sewer service.

B. The customer ~~shall be~~ is responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.

C. Billings may be prorated. The proration ~~shall~~ will be a daily rate determined by dividing the annual minimum billing by 365 days times the number of days of occupancy from last meter reading and/or billing date.

D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.

E. All money collected through stormwater fees and charges ~~shall~~ must be deposited in the stormwater utility account as established and maintained by the City's Finance Director.

F. Funds collected under this chapter will be used for the purpose of designing, acquiring, developing, constructing, maintaining, improving, and operating both manmade and nature- based stormwater systems.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.055. PUBLIC INVESTMENT OF STORMWATER FUNDS.

Funds collected under this chapter will not be used for maintaining, operating, or improving a stormwater system on private property, or to provide direct financial assistance for private tree removal except when:

A. Providing non-federal grant match funding to projects that reduce or eliminate the risk of repetitive flood damage to buildings on private property insured by the National Flood Insurance Program; or

B. The stormwater system is (or component thereof) demonstrated to the satisfaction of the ~~City Engineer~~ Manager to provide a stormwater benefit that extends beyond the boundaries of the private property; or

C. It can be demonstrated to the satisfaction of the ~~City Engineer~~ Manager in consultation with the Urban Forester that a private tree provides a stormwater benefit that extends beyond the boundaries of the private property; or

D. The stormwater system has been dedicated to the City and is within a public easement. (Ord. 2223 § 1, 2022)

13.14.060. STORMWATER CHARGES—WHEN DELINQUENT.

A. The City ~~shall~~ must prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.

B. A delinquent fee, in an amount established by resolution of the City Council, ~~shall~~ will be added to all delinquent accounts.

C. The Finance Director or designee is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.

D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for nonpayment of water bills as provided in Chapter 13.04. However, the Finance Director ~~shall~~ may not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

(Ord. 1755 § 6, 1994; Ord. 1895 § 4, 2001; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.070. DELINQUENT CHARGES—LIEN.

If the property owner elects pursuant to Section 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges ~~shall~~ must be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record ~~shall~~ must be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid 60 days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.080. APPEAL.

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the Manager by filing with the City a written request for review no later than 10 days after receiving the decision. The Manager's decision shall be subject to review by the City Council upon filing of an appeal within 15 days of the notice of decision. (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.090. RIGHT OF ACCESS.

Employees of the City ~~shall~~ must be provided access during regular business hours to all parts of the premises which include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.
(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.100. TAMPERING WITH SYSTEM.

A. No unauthorized person ~~shall~~ may damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment which is a part of the stormwater system.

B. The Manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations is deemed a violation of this chapter and ~~shall~~ will be punished accordingly.

C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA.

   In order to protect the waters the City has a comprehensive enforcement program to comply with:

   1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.

   2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:

      a. Prohibit non-stormwater discharge into the public stormwater system; and

      b. Require controls to reduce the discharge of pollutants from

stormwater to the maximum extent practicable.

3. Section 303(d) of the CWA requiring states and the EPA to identify certain substandard waters and to set total maximum daily loads (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.

4. The Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.

5. All provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.

6. The Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

13.14.105. DISCHARGE REGULATIONS.

A. Discharge of Pollutants

The commencement, conduct, or continuance of any non-stormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition ~~shall~~ does not apply to any non-stormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).

2. Except as provided in subsection A.3, the prohibition ~~shall~~ does not apply to the following non-stormwater discharges to the public stormwater system: ~~municipal~~ uncontaminated water line flushing~~,~~; landscape irrigation~~,~~; diverted stream flows~~,~~; ~~rising groundwater,~~ uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to ~~the municipal separate storm sewer system (MS4)~~ separate storm sewers; rising groundwaters~~,~~; uncontaminated pumped groundwater~~,~~; discharges from potable water sources (including potable groundwater monitoring wells and drainage and flushing of municipal potable water storage reservoirs), startup flushing of groundwater wells, foundation, footing and crawlspace drains (where flows are not contaminated) ~~drains~~, uncontaminated air conditioning or compressor ~~condensation~~ condensate~~,~~; irrigation water, springs, ~~water from crawl space pumps, footing drains,~~ lawn watering, individual residential car washing, charity car washing (provided that

steam and heat are not used, washing is restricted to the outside of the vehicle with no rinsing or washing of engines, transmissions, or undercarriages, and only phosphate-free soaps/detergents are used); flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, including hot tubs (heated water must cool for at least 12 hours prior to discharge and swimming pool and hot tub discharges with other pollutants such as bromine and copper may not be discharged to the MS4); street and pavement washwaters, including for bridges or pedestrian bridges (provided that chemicals, soaps, detergents, steam, or heated water are not used); routine external building wash-down (provided that chemicals, soaps, detergents, steam, or heated water are not used); and water associated with dye testing activity. ~~, and flows from fire fighting activities.~~

3. The Manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection A.2, if at any time the Manager determines that the discharge is, was, or will be a significant source of pollution.

B. Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge ~~shall be~~ is the responsibility of the person(s) causing or responsible for the discharge, and such persons ~~shall~~ must defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

C. Illicit Connections, ~~and Illicit~~ Discharges, and Chronic Illicit Discharge

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

D. Waste Disposal Prohibitions

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including, but not limited to, any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.

2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, ~~shall~~ may not discharge directly to a private or public stormwater system; this includes, but is not limited to, outdoor commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

E. General Discharge Prohibitions

1. Discharge to Sanitary Sewer System

No person ~~shall~~ may discharge or contribute to the discharge of any stormwater or other unpolluted water into the City's sanitary sewer system.

2. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

a. Any discharge having a visible sheen, or containing floating solids or discoloration (including, but not limited to, dyes and inks);

b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances;

c. Any discharge which causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel;

d. Any discharge containing human sanitary waste or animal feces. (Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.110. COMPLIANCE REQUIRED.

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions ~~shall~~ may be made only upon the written authorization of the Manager. (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.115. INSPECTION AND ENFORCEMENT.

A. Authority to Inspect

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Manager has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this

chapter, the Manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Manager by this chapter; provided that: (a) if such building or premises is occupied, ~~he or she~~ they first ~~shall~~ must present proper credentials and request entry; and (b) if such building or premises is unoccupied, ~~he or she~~ they must first ~~shall~~ make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.

B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the Manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Enforcement Procedures

For any violation of MMC Chapter 13.14, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 13.14, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

a. The name and address of the applicant or the responsible person;

b. The address or other description of the site where the violation is occurring;

c. A statement specifying the nature of the violation;

d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 13.14;

e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require

the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The amount and type of pollution discharged will inform the date by which compliance is required;

f. A statement of the penalties that may be assessed; and

g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 13.14 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Chronic Illicit Discharge

Not withstanding other provisions in this Section 13.14.115, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 13.14 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

6. Additional Requirements

a. Requirement to Eliminate Illicit Connections

For an illicit connection to the public stormwater system, compliance requires eliminating the connection. Once the connection is eliminated, if the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect as provided in Section 13.14.030. The reconnection or reinstallation of the connection will be at the responsible person's expense.

b. Requirement to Monitor and Analyze

Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution, illicit discharge, or chronic illicit discharge to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice must be served either in person or by certified or registered mail, return receipt requested, and must set forth the basis for such order and particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; must bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order must undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

C. ~~Continuing Violation~~

~~Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.~~

~~D. Concealment~~

~~Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of the chapter.~~

~~E. Acts Resulting in Violation of Federal Law~~

~~Any person who violates any provision of this chapter, or any provision of any stormwater- related permit issued by DEQ, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the CWA, Safe Drinking Water Act, or the ESA and may be subject to the sanctions of these Acts including civil and criminal penalties.~~

~~F. Violations Deemed a Nuisance~~

~~Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and~~

~~constitutes a nuisance. In addition to any other remedies, the Manager may enforce this chapter by compliance order, stop work order, abatement proceedings, or civil action as provided in MMC 8.04.070, or as otherwise authorized by law.~~

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.120. VIOLATIONS and PENALTY.

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter constitutes a violation of the chapter.

C. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater- related permit issued by Department of Environmental Quality, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Clean Water Act, Safe Drinking Water Act, or the Endangered Species Act and may be subject to the sanctions of these Acts including civil and criminal penalties.

D. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.

E. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than $1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations. Each day on which a violation occurs or continues is a separate offense.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

§ 13.14.130. DISCLAIMER OF LIABILITY.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant

technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter ~~shall~~ will not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

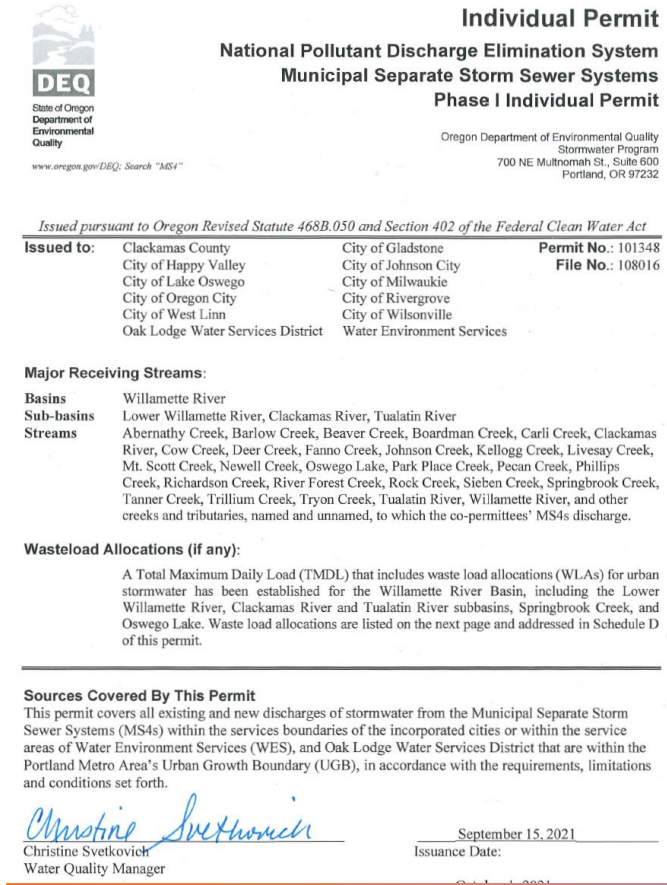
CITY OF **MILWAUKIE**

Erosion Control Code Amendments

City Council Work Session
October 15, 2024

Stormwater Compliance

- National Pollutant Discharge Elimination System (NPDES)
- Phase 1 Permit
- Modified in 2023
  - Pesticides
- Managed via Stormwater Management Program



DEQ
State of Oregon Department of Environmental Quality
www.oregon.gov/DEQ; Search "MS4"

Individual Permit
National Pollutant Discharge Elimination System
Municipal Separate Storm Sewer Systems
Phase I Individual Permit

Oregon Department of Environmental Quality
Stormwater Program
700 NE Multnomah St., Suite 600
Portland, OR 97232

Issued pursuant to Oregon Revised Statute 468B.050 and Section 402 of the Federal Clean Water Act

Issued to: Clackamas County; City of Happy Valley; City of Lake Oswego; City of Oregon City; City of West Linn; Oak Lodge Water Services District; City of Gladstone; City of Johnson City; City of Milwaukie; City of Rivergrove; City of Wilsonville; Water Environment Services

Permit No.: 101348
File No.: 108016

Major Receiving Streams:

Basins Willamette River
Sub-basins Lower Willamette River, Clackamas River, Tualatin River
Streams Abernathy Creek, Barlow Creek, Beaver Creek, Boardman Creek, Carli Creek, Clackamas River, Cow Creek, Deer Creek, Fanno Creek, Johnson Creek, Kellogg Creek, Livesay Creek, Mt. Scott Creek, Newell Creek, Oswego Lake, Park Place Creek, Pecan Creek, Phillips Creek, Richardson Creek, River Forest Creek, Rock Creek, Sieben Creek, Springbrook Creek, Tanner Creek, Trillium Creek, Tryon Creek, Tualatin River, Willamette River, and other creeks and tributaries, named and unnamed, to which the co-permittees' MS4s discharge.

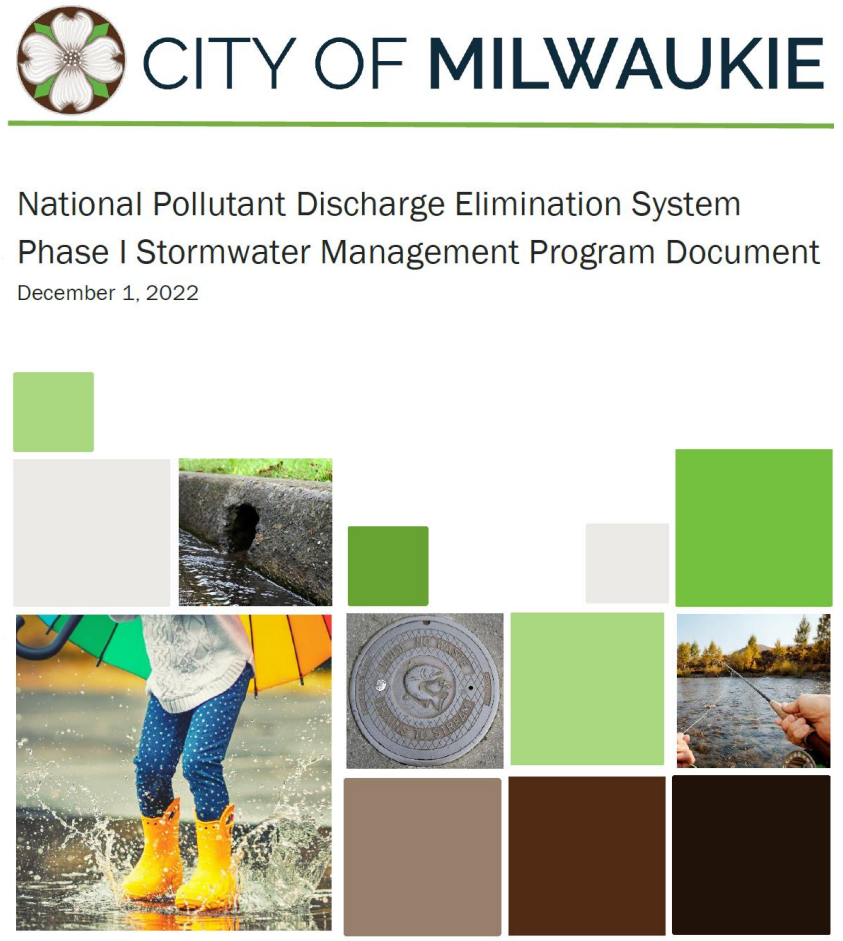
Wasteload Allocations (if any):

A Total Maximum Daily Load (TMDL) that includes waste load allocations (WLAs) for urban stormwater has been established for the Willamette River Basin, including the Lower Willamette River, Clackamas River and Tualatin River subbasins, Springbrook Creek, and Oswego Lake. Waste load allocations are listed on the next page and addressed in Schedule D of this permit.

Sources Covered By This Permit
This permit covers all existing and new discharges of stormwater from the Municipal Separate Storm Sewer Systems (MS4s) within the services boundaries of the incorporated cities or within the service areas of Water Environment Services (WES), and Oak Lodge Water Services District that are within the Portland Metro Area's Urban Growth Boundary (UGB), in accordance with the requirements, limitations and conditions set forth.

Christine Svetkovich
Water Quality Manager

September 15, 2021
Issuance Date:



CITY OF MILWAUKIE

National Pollutant Discharge Elimination System
Phase I Stormwater Management Program Document
December 1, 2022

SWMP Components

- Public Education and Outreach
- Public Involvement and Participation
- Illicit Discharge Detection and Elimination
- Construction Site Runoff Control
- Post-Construction Site Runoff for New Development and Redevelopment
- Pollution Prevention and Good Housekeeping for Municipal Operations
- Industrial and Commercial Program

Code Amendments

- Required by Permit Condition A.2.b Legal Authority
  - Construction Site Runoff Control
- The co-permittees must continue to implement and maintain a written escalating enforcement and response procedure for all qualifying construction sites.
  - Address repeat violations through progressively stricter responses
- City's Erosion Control SOP outlines procedure
  - Inspection –Notice of Violation- Remediation- Re-inspection – Stop Work Order – Fine

Erosion Control Violations - Examples

Amendments

- Chapter 13.14 Stormwater Management
- Chapters 16.28 Erosion Control
- Definitions to align with NPDES Permit
- Escalating Enforcement
- Updated Violations and Penalty sections for consistency

Thank you!

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CITY OF MILWAUKIE

WS 2. 10/15/24

OCR USE ONLY

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Date Written: Oct. 3, 2024

Reviewed: Joseph Briglio, Acting Assistant City Manager

From: Laura Weigel, Planning Manager
Vera Kolias, Senior Planner

Subject: **Oregon Senate Bill (SB) 1537 – Options for Compliance**

ACTION REQUESTED

Council is asked to participate in a briefing for discussion only. Staff requests feedback from Council to guide a future code amendment package addressing Oregon Senate Bill (SB) 1537 – see Attachment 1 for full text.

ANALYSIS

The purpose of SB 1537, signed into law on March 5, 2024, is to address Oregon's housing supply and affordability crisis. The law becomes effective on January 1, 2025, and sunsets on January 2, 2032, and has several key provisions, summarized here (see Attachment 1):

1. Establishes a new Housing Accountability and Production Office;
2. Requires cities to grant administrative adjustments (variances) to local siting and design standards for housing development;
3. Funds new infrastructure programs and other land readiness costs to support housing development;
4. Establishes a new state revolving loan fund for local governments to administer loans for moderate-income housing development; and
5. Provides a one-time Urban Growth Boundary (UGB) expansion tool, among other land use changes.

This staff report focuses on item #2 above – the required adjustments (variances) to code requirements.

SB 1537 – Summary of Required Adjustments

The measure requires local governments to grant land use regulation and design adjustments (what the city refers to as a variance[1]) in certain circumstances. It specifies conditions and timelines under which local governments must grant variances to existing land use regulation and design and development standards for housing development.

The measure also specifies that decisions on these variance applications are limited land use decisions and only the applicant may appeal.

[1] The rest of this report will refer to adjustments as variances.

Specific provisions of the required variances:

- An applicant qualifies for a variance if:
    - The development is in a zone that allows residential or mixed-use development;
    - The residential development meets minimum density of 17 du/acre;
    - The residential development is a net increase in new housing units:
        - Single detached dwellings;
        - Mixed use residential with a minimum of 75% residential use;
        - Manufactured dwelling parks;
        - Accessory Dwelling Units (ADUs);
        - Middle housing.
- The variance application cannot ask for more than 10 distinct variances to development standards.
- The application must state how at least one of the following criteria applies:
    - The variances will enable development of housing that is not otherwise feasible due to cost or delay resulting from the base zone standards[2];
    - The variances will enable development of housing that reduces the sale or rental price per dwelling unit;
    - The variances will increase the number of housing units within the application;
    - The variances will enable the provision of accessibility or visitability features in housing units that are not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations[3];
    - All of the dwelling units are subject to an affordable housing covenant making them affordable to moderate income households for a minimum of 30 years;
    - At least 20 percent of the units are subject to an affordable housing covenant making them affordable to low-income households for a minimum of 60 years;
    - All of the units in the application are subject to a zero equity, limited equity, or shared equity ownership model including resident-owned cooperatives and community land trusts making them affordable to moderate income households for a period of 90 years.
- A local government must grant a variance to the following[4]:
    - Development standards:
        - Side or rear yard setbacks: 10% variance
        - Common area, minimum landscaping, or open space: reduction of up to 25%
        - Parking quantity minimums
        - Minimum lot size: up to 10%
        - Minimum lot width or depth: up to 10%
        - Maximum lot coverage: up to 10%
        - For manufactured dwelling parks, middle housing, multi-unit residential, and mixed-use residential:
            - Bike parking: minimum number of spaces (0.5 spaces/dwelling required) and location of spaces

[2] There is no requirement in the bill requiring specific substantiation of this claim.
[3] Ibid.
[4] This is the list of adjustments specified in SB 1537. An adjustment does not include: accessibility, affordability, tree code, natural resources, Willamette Greenway, fire ingress/egress, or safety.

- Max. building height (except cottage clusters): allows additional maximum 1 story or 20 ft
- Max. density: not more than necessary
- Prohibition on ground-floor residential: must be allowed except for one building face that abuts the street
- Prohibition on ground-floor of nonresidential active uses that support the residential use: community rooms, exercise rooms, offices, day care, etc.
- Building orientation requirements
- Building height transition requirements
- Requirements for balconies and porches
- Requirements for recesses and offsets

o Design standards:
  - Façade materials, color
  - Façade articulation
  - Roof forms and materials
  - Entry and garage door materials
  - Garage door orientation
  - Window materials
  - Total window area: up to 30% variance; minimum 12% required

The measure allows cities to request an exemption from SB 1537 if they can show that all the listed variances are eligible for a variance within the city's code AND that within the last 5 years the city has approved 90 percent of requested variances. (See section below.)

The measure becomes effective on January 1, 2025, and sunsets on January 2, 2032.

Review Process

Variances requested under SB 1537 are limited land use decisions, which means they are Type II administrative decisions (public notice required; Planning Manager is the decision-maker). However, the legislation modifies the Type II process. First, it stipulates that only the applicant may appeal the decision; no notice of the decision is required if the application is denied, other than to the applicant. Second, the statute also includes extensions, alterations, or expansions of nonconforming uses as a type of application that must be processed through the Type II review process. When sending the notice, staff plans to include additional language clarifying that an application is being submitted under SB 1537 so that recipients understand the limitations of input and comments.

Implementation of SB 1537

Because the provisions of the measure will sunset in 2032, staff recommends that wholesale code amendments implementing the measure are not made. Rather, staff will apply the measure on an as-needed basis when requested by an applicant. The Oregon Department of Land Conservation and Development (DLCD) also does not recommend making code amendments, given the sunset clause.

Exemption to SB 1537

As noted above, the measure allows a city to request an exemption from SB 1537's variance requirement if the city can show that all the listed variances are eligible for a variance within the city's code AND that within the last five years the city has approved 90 percent of requested variances. Section 19.911 of Milwaukie's zoning code provides all the applicability information

and procedures for variances. Nearly all the identified variances in SB 1537 can be requested in the city's existing variance code (either Type II or Type III process). While staff can document that over 90% of requested variances over the last five years were approved during the land use review process, the city's code prohibits variances that would result in dwelling units beyond the maximum density. **Therefore, the city cannot request an exemption to the provisions of SB 1537 without a code amendment.**

If the city were granted an exemption, the city would process variance applications as we currently do. This would mean that some variance applications would be processed as Type III applications, which is different from the requirements of the statute. For example, departures from the material requirements for mixed-use buildings in the downtown would be considered via Type III downtown design review. This is allowable per the statute as a Type II variance. Please note that the city currently limits the number of variances to three requests for each application. So, with the exemption, an applicant seeking 10 distinct variances would have to submit four variance applications, which would cost thousands of dollars in fees.

Maximum Density

Maximum density means the maximum number of units allowed in a development per acre of the site. The city's code (Milwaukie Municipal Code (MMC) 19.911.2.B) prohibits variances that would result in dwelling units beyond the maximum density in residential zones (effectively increasing the maximum density of the zone) except for middle housing (not including townhouses). Middle housing is required by the state to be exempt from maximum density, but we still have maximum density standards that apply to single-detached dwellings and multi-unit developments in our residential zones. That said, the city's code relies primarily on development standards to regulate site development, i.e. development standards effectively keep density under the maximum density. The only way to increase density in a residential zone would be to seek approval for a planned development, which allows a 20% density bonus and the city processes very few planned developments.

To apply for an exemption from SB 1537 the city would need to change the code to allow for variances to the maximum density for single-detached dwellings and multi-unit developments. Allowing variances to the maximum density in a Type III review is not as significant as the potential impact of allowing up to 10 variances on development applications. The applicable development standards (maximum lot coverage, setbacks, minimum landscaping, etc.) regulate the "Jello mold" of structures in a development and allow the applicant to fit dwelling units into that Jello mold (See Figure 1). Density maximums only limit the number of units, not the Jello mold of the structure and its relationship to the lot.

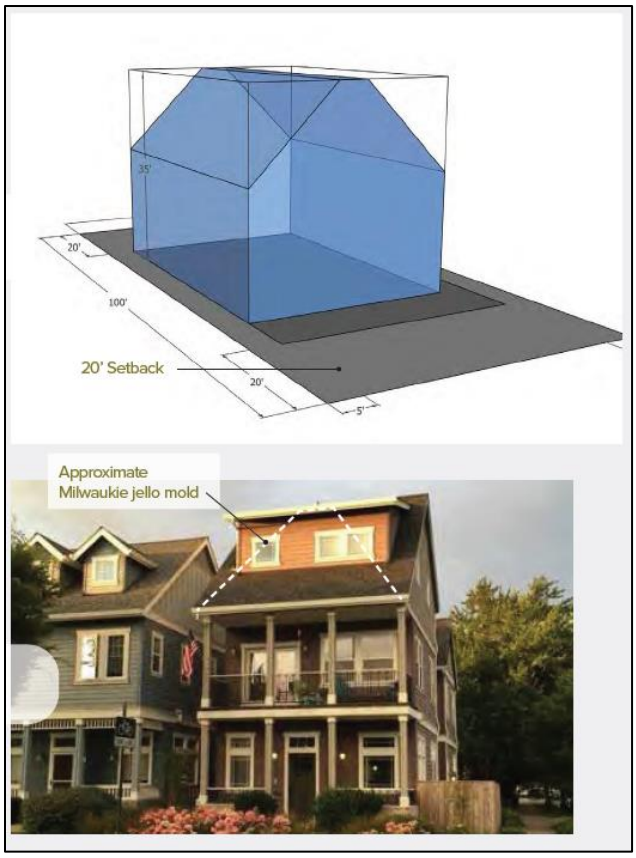

Figure 1. "Jello mold" illustration showing how development standards regulate the mold - regardless of the number of units.

Staff Recommendation

If the city adopts a code amendment removing the prohibition on variances to maximum density in residential zones, the city could then apply for the exemption from SB 1537.

If the city does not adopt code amendment removing the prohibition on variances to maximum density in residential zones, the city must apply SB 1537 to residential development that meets at least one of the applicability criteria. This would result in residential developments that could seek up to 10 variances, as listed above, that would be processed in a modified Type II procedure.

Staff recommends Council adopt a code amendment removing the prohibition on variances to maximum density. A variance would still be required, so the recommendation would not eliminate maximum density, but would allow for the opportunity for flexibility via a Type II or III review (see Attachment 2) with a public hearing before the Planning Commission (Type III) and public notice.

*For discussion at a later date - Staff is considering proposing using the allowable variances to the development standards from SB 1537 as the base for developing a new **affordable** (not market rate) housing code incentives package. Staff will bring that conversation to Council early next year.*

Key Questions

1. Does Council agree with the recommendation to remove the prohibition on variances to the maximum density for single-detached dwellings and multi-unit developments?
2. If yes, and the city amends the code, should the city seek the exemption from the statute?

BUDGET IMPACT
None.

CLIMATE IMPACT
As with the middle housing code, implementation of regulations allowing a more efficient pattern of development provides opportunities for more walkability/bikeability and compact development patterns. This can lead to less dependence on motor vehicles, more transit opportunities, and more efficient use of available infrastructure.

EQUITY IMPACT
Removing barriers to development of housing is a key component of the city's housing production strategy. More importantly, the city consistently looks for ways to incentivize development of housing that is income-restricted to provide even more opportunities to make affordable housing possible. Providing incentives for affordable housing like the ones suggested here – requiring approval of variances to many types of development and design standards – will streamline the land use review process while increasing flexibility for developers. The entire city benefits from having a wide variety of housing types at many price levels, but most importantly are those with fewer resources.

WORKLOAD IMPACT
While the proposed amendments may result in more variance applications, they can be absorbed into the department's current planning workplan.

COORDINATION, CONCURRENCE, OR DISSENT
None.

STAFF RECOMMENDATION

1. Given the mandatory variance to maximum density in SB 1537 and the issue of needed housing within the city, as identified in the Housing Capacity Analysis (HCA), as well other development standards that limit the size of a structure, staff proposes a code amendment that removes the prohibition on variances to maximum density.
    a. This code amendment would require public hearings before the Planning Commission and Council for final adoption. Given mandatory noticing, these hearings would occur in early 2025.
2. Further, staff recommends:
    a. That the city seeks an exemption to the provisions found in SB 1537 when the above code amendment is adopted. DLCD should be releasing the required steps to request an exemption soon.
    b. Adopt code amendments related to affordable housing incentives that would include the provisions of SB 1537 – but apply them only to affordable housing. Staff is scheduled to discuss the proposed code with Council during the January 5, 2024, work session.

ALTERNATIVES
Council is asked to provide direction on whether staff should seek an exemption from the provisions of SB 1537.

ATTACHMENTS

1. Text of SB 1537 – Enrolled
2. Proposed code amendment (underline/strikeout)

82nd OREGON LEGISLATIVE ASSEMBLY--2024 Regular Session

Enrolled
Senate Bill 1537

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Tina Kotek for Office of the Governor)

CHAPTER .....

AN ACT

Relating to housing; creating new provisions; amending ORS 183.471, 197.015, 197.195, 197.335, 197.843, 215.427, 227.178 and 455.770; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

HOUSING ACCOUNTABILITY AND PRODUCTION OFFICE

SECTION 1. Housing Accountability and Production Office. (1) The Department of Land Conservation and Development and the Department of Consumer and Business Services shall enter into an interagency agreement to establish and administer the Housing Accountability and Production Office.

(2) The Housing Accountability and Production Office shall:

(a) Provide technical assistance, including assistance through grants, to local governments to:

(A) Comply with housing laws;

(B) Reduce permitting and land use barriers to housing production; and

(C) Support reliable and effective implementation of local procedures and standards relating to the approval of residential development projects.

(b) Serve as a resource, which includes providing responses to requests for technical assistance with complying with housing laws, to:

(A) Local governments, as defined in ORS 174.116; and

(B) Applicants for land use and building permits for residential development who are experiencing permitting and land use barriers related to housing production.

(c) Investigate and respond to complaints of violations of housing laws under section 2 of this 2024 Act.

(d) Establish best practices related to model codes, typical drawings and specifications as described in ORS 455.062, procedures and practices by which local governments may comply with housing laws.

(e) Provide optional mediation of active disputes relating to housing laws between a local government and applicants for land use and building permits for residential development, including mediation under ORS 197.860.

(f) Coordinate agencies that are involved in the housing development process, including, but not limited to, the Department of Land Conservation and Development, Department of

Consumer and Business Services, Housing and Community Services Department and Oregon Business Development Department, to enable the agencies to support local governments and applicants for land use and building permits for residential development by identifying state agency technical and financial resources that can address identified housing development and feasibility barriers.

(g) Establish policy and funding priorities for state agency resources and programs for the purpose of addressing barriers to housing production, including, but not limited to, making recommendations for moneys needed for the purposes of section 35 of this 2024 Act.

(3) The Land Conservation and Development Commission and the Department of Consumer and Business Services shall coordinate in adopting, amending or repealing rules for:

(a) Carrying out the respective responsibilities of the departments and the office under sections 1 to 5 of this 2024 Act.

(b) Model codes, development plans, procedures and practices by which local governments may comply with housing laws.

(c) Establishing standards by which complaints are investigated and pursued.

(4) The office shall prioritize assisting local governments in voluntarily undertaking changes to come into compliance with housing laws.

(5) As used in sections 1 to 5 of this 2024 Act:

(a) "Housing law" means ORS chapter 197A and ORS 92.010 to 92.192, 92.830 to 92.845, 197.360 to 197.380, 197.475 to 197.493, 197.505 to 197.540, 197.660 to 197.670, 197.748, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150, 455.152, 455.153, 455.156, 455.157, 455.165, 455.170, 455.175, 455.180, 455.185 to 455.198, 455.200, 455.202 to 455.208, 455.210, 455.220, 455.465 and 455.467 and administrative rules implementing those laws, to the extent that the law or rule imposes a mandatory duty on a local government or its officers, employees or agents and the application of the law or rule applies to residential development or pertains to a permit for a residential use or a division of land for residential purposes.

(b) "Residential" includes mixed-use residential development.

SECTION 2. Office responses to violations of housing laws. (1) The Housing Accountability and Production Office shall establish a form or format through which the office receives allegations of local governments' violations of housing laws that impact housing production. For complaints that relate to a specific development project, the office may receive complaints only from the project applicant. For complaints not related to a specific development project, the office may receive complaints from any person within the local government's jurisdiction or the Department of Land Conservation and Development or the Department of Consumer and Business Services.

(2)(a) Except as provided in paragraph (c) of this subsection, the office shall investigate suspected violations of housing laws or violations credibly alleged under subsection (1) of this section.

(b) The office shall develop consistent procedures to evaluate and determine the credibility of alleged violations of housing laws.

(c) If a complainant has filed a notice of appeal with the Land Use Board of Appeals or has initiated private litigation regarding any aspect of the application decision that was alleged to have been the subject of the housing law violation, the office may not further participate in the specific complaint or its appeal, except for:

(A) Providing agency briefs, including briefs under ORS 197.830 (8), to the board or the court;

(B) Providing technical assistance to the local government unrelated to the resolution of the specific complaint; or

(C) Mediation at the request of the local government and complainant, including mediation under ORS 197.860.

(3)(a) If the office has a reasonable basis to conclude that a violation was or is being committed, the office shall deliver written warning notice to the local government specifying

the violation and any authority under this section that the office intends to invoke if the violation continues or is not remedied. The notice must include an invitation to address or remedy the suspected violation through mediation, the execution of a compliance agreement to voluntarily remedy the situation, the adoption of suitable model codes developed by the office under section 1 (3)(b) of this 2024 Act or other remedies suitable to the specific violation.

(b) The office shall prioritize technical assistance funding to local governments that agree to comply with housing laws under this subsection.

(c) A determination by the office is not a legislative, judicial or quasi-judicial decision.

(4) No earlier than 60 days after a warning notice is delivered under subsection (3) of this section, the office may:

(a) Initiate a request for an enforcement order of the Land Conservation and Development Commission by delivering a notice of request under section 3 (3) of this 2024 Act.

(b) Seek a court order against a local government as described under ORS 455.160 (3) without being adversely affected or serving the demand as described in ORS 455.160 (2).

(c) Notwithstanding ORS 197.090 (2)(b) to (e), participate in and seek review of a matter under ORS 197.090 (2)(a) that pertains to housing laws without the notice or consent of the commission. No less than once every two years, the office shall report to the commission on the matters in which the office participated under this paragraph.

(d) Except regarding matters under the exclusive jurisdiction of the Land Use Board of Appeals, apply to a circuit court for an order compelling compliance with any housing law. If the court finds that the defendant is not complying with a housing law, the court may grant an injunction requiring compliance.

(5) The office may not, in the name of the office, exercise the authority of the Department of Land Conservation and Development under ORS 197A.130.

(6) The office shall send notice to each complainant under subsection (1) of this section at the time that the office:

(a) Takes any action under subsection (3) or (4) of this section; or

(b) Has determined that it will not take further actions or make further investigations.

(7) The actions authorized of the office under this section are in addition to and may be exercised in conjunction with any other investigative or enforcement authority that may be exercised by the Department of Land Conservation and Development, the Land Conservation and Development Commission or the Department of Consumer and Business Services.

(8) Nothing in this section:

(a) Amends the jurisdiction of the Land Use Board of Appeals or of a circuit court;

(b) Creates a new cause of action; or

(c) Tolls or extends:

(A) The statute of limitations for any claim; or

(B) The deadline for any appeal or other action.

SECTION 3. Office enforcement orders. (1) The Housing Accountability and Production Office may request an enforcement order under section 2 (4)(a) of this 2024 Act requiring that a local government take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions or actions into compliance with a housing law, except for a housing law that pertains to the state building code or the administration of the code.

(2) Except as otherwise provided in this section, a request for an enforcement order by the office is subject to the applicable provisions of ORS 197.335 and ORS chapter 183 and is not subject to ORS 197.319, 197.324 or 197.328.

(3) The office shall make a request for an enforcement order under this section by delivering a notice to the local government that states the grounds for initiation and summarizes the procedures for the enforcement order proceeding along with a copy of the notice

to the Land Conservation and Development Commission. A decision of the office to initiate an enforcement order is not subject to appeal.

(4) After receiving notice of an enforcement order request under subsection (3) of this section, the local government shall deliver a notice to an affected applicant, if any, in substantially the following form:

NOTICE: The Housing Accountability and Production Office has found good cause for an enforcement proceeding against _____ (name of local government). An enforcement order may be adopted that could limit, prohibit or require the application of specified criteria to any action authorized by this decision but not applied for until after the adoption of the enforcement order. Future applications for building permits or time extensions may be affected.

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(5) Within 14 days after receipt by the commission of the notice under subsection (3) of this section, the Director of the Department of Land Conservation and Development shall assign the enforcement order proceedings to a hearings officer who is:

(a) An administrative law judge assigned under ORS 183.635; or

(b) A hearings officer randomly selected from a pool of officers appointed by the commission to review proceedings initiated under this section.

(6) The hearings officer shall schedule a contested case hearing within 60 days of the delivery of the notice to the commission under subsection (3) of this section.

(7)(a) The hearings officer shall prepare a proposed enforcement order or order of dismissal, including recommended findings and conclusions of law.

(b) A proposed enforcement order may require the local government to take any necessary action to comply with housing laws that is suitable to address the basis for the proposed enforcement order, including requiring the adoption or application of suitable models that have been developed by the office under section 1 (3)(b) of this 2024 Act.

(c) The hearings officer must issue and serve the proposed enforcement order on the office and all parties to the hearing within 30 days of the date the record closed.

(8)(a) The proposed enforcement order becomes a final order of the commission 14 days after service on the office and all parties to the hearing, unless the office or a party to the hearing appeals the proposed enforcement order to the commission prior to the proposed enforcement order becoming final.

(b) If the proposed enforcement order is appealed, the commission shall consider the matter at:

(A) Its next regularly scheduled meeting; or

(B) If the appeal is made 45 or fewer days prior to the next regularly scheduled meeting, at the following regularly scheduled meeting or a special meeting held earlier.

(9) The commission shall affirm, affirm with modifications or reverse the proposed enforcement order. The commission shall issue a final order no later than 30 days after the meeting at which it considered the matter.

(10) The commission may adopt rules administering this section, including rules related to standing, preserving issues for commission review or other provisions concerning the commission's scope and standard for review of proposed enforcement orders under this section.

SECTION 4. Housing Accountability and Production Office Fund. (1) The Housing Accountability and Production Office Fund is established in the State Treasury, separate and distinct from the General Fund.

(2) The Housing Accountability and Production Office Fund consists of moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly or otherwise.

(3) Interest earned by the fund shall be credited to the fund.

(4) Moneys in the fund are continuously appropriated to the Department of Land Conservation and Development to administer the fund, to operate the Housing Accountability and Production Office and to implement sections 1 to 5 of this 2024 Act.

SECTION 5. Reporting. On or before September 15, 2026, the Housing Accountability and Production Office shall:

(1) Contract with one or more organizations possessing relevant expertise to produce a report identifying improvements in the local building plan review approval, design review approval, land use, zoning and permitting processes, including but not limited to plan review approval timelines, process efficiency, local best practices and other ways to accelerate and improve the efficiency of the development process for construction, with a focus on increasing housing production.

(2) Produce a report based on a study by the office of state and local timelines and standards related to public works and building permit application review and develop recommendations for changes to reduce complexity, delay or costs that inhibit housing production, including an evaluation of their effect on the feasibility of varying housing types and affordability levels.

(3) Produce a report summarizing state agency plans, policies and programs related to reducing or eliminating regulatory barriers to the production of housing. The report must also include recommendations on how state agencies may prioritize resources and programs to increase housing production.

(4) Provide the reports under subsections (1) to (3) of this section to one or more appropriate interim committees of the Legislative Assembly in the manner provided in ORS 192.245.

SECTION 6. Sunset. Section 5 of this 2024 Act is repealed on January 2, 2027.

SECTION 7. Operative and applicable dates. (1) Sections 2 and 3 of this 2024 Act become operative on July 1, 2025.

(2) Sections 2 and 3 of this 2024 Act apply only to violations of housing laws occurring on or after July 1, 2025.

(3) The Department of Land Conservation and Development and Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary for the departments or the Housing Accountability and Production Office to exercise, on and after the operative date, all of the duties, functions and powers conferred by sections 1 to 5, 35, 39 and 46 of this 2024 Act.

OPTING IN TO AMENDED HOUSING REGULATIONS

SECTION 8. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing

information. The application shall be deemed complete for the purpose of subsection (1) of this section and ORS 197A.470 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information[*, as described in subsection (2) of this section,*] within 180 days of the date the application was first submitted [*and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251*], approval or denial of the application [*shall be based*] **must be based:**

(A) Upon the standards and criteria that were applicable at the time the application was first submitted[.]**; or**

(B) For an application relating to development of housing, upon the request of the applicant, those standards and criteria that are operative at the time of the request.

(b) If an applicant requests review under different standards as provided in paragraph (a)(B) of this subsection:

(A) For the purposes of this section, any applicable timelines for completeness review and final decisions restart as if a new application were submitted on the date of the request;

(B) For the purposes of this section and ORS 197A.470 the application is not deemed complete until:

(i) The county determines that additional information is not required under subsection (2) of this section; or

(ii) The applicant makes a submission under subsection (2) of this section in response to a county's request;

(C) A county may deny a request under paragraph (a)(B) of this subsection if:

(i) The county has issued a public notice of the application; or

(ii) A request under paragraph (a)(B) of this subsection was previously made; and

(D) The county may not require that the applicant:

(i) Pay a fee, except to cover additional costs incurred by the county to accommodate the request;

(ii) Submit a new application or duplicative information, unless information resubmittal is required because the request affects or changes information in other locations in the application or additional narrative is required to understand the request in context; or

(iii) Repeat redundant processes or hearings that are inapplicable to the change in standards or criteria.

[*(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.*]

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section or the 100-day period set in ORS 197A.470 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section and the 100-day period set in ORS 197A.470 do not apply to:

(a) A decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610; or

(b) A decision of a county involving an application for the development of residential structures within an urban growth boundary, where the county has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197A.470 or 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(10) The periods set forth in subsections (1) and (5) of this section and ORS 197A.470 may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

SECTION 9. ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section or ORS 197A.470 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted [*and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251*], approval or denial of the application [*shall*] **must** be based**:**

(A) Upon the standards and criteria that were applicable at the time the application was first submitted[.]**; or**

(B) For an application relating to development of housing, upon the request of the applicant, those standards and criteria that are operative at the time of the request.

(b) If an applicant requests review under different standards as provided in paragraph (a)(B) of this subsection:

(A) For the purposes of this section, any applicable timelines for completeness review and final decisions restart as if a new application were submitted on the date of the request;

(B) For the purposes of this section and ORS 197A.470 the application is not deemed complete until:

(i) The city determines that additional information is not required under subsection (2) of this section; or

(ii) The applicant makes a submission under subsection (2) of this section in response to a city's request;

(C) A city may deny a request under paragraph (a)(B) of this subsection if:

(i) The city has issued a public notice of the application; or

(ii) A request under paragraph (a)(B) of this subsection was previously made; and

(D) The city may not require that the applicant:

(i) Pay a fee, except to cover additional costs incurred by the city to accommodate the request;

(ii) Submit a new application or duplicative information, unless information resubmittal is required because the request affects or changes information in other locations in the application or additional narrative is required to understand the request in context; or

(iii) Repeat redundant processes or hearings that are inapplicable to the change in standards or criteria.

[*(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.*]

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section or the 100-day period set in ORS 197A.470 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section and the 100-day period set in ORS 197A.470 do not apply to:

(a) A decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610; or

(b) A decision of a city involving an application for the development of residential structures within an urban growth boundary, where the city has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit,

limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197A.470 or 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The periods set forth in subsections (1) and (5) of this section and ORS 197A.470 may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

ATTORNEY FEES FOR NEEDED HOUSING CHALLENGES

SECTION 10. ORS 197.843 is amended to read:

197.843. (1) The Land Use Board of Appeals shall award attorney fees to**:**

(a) An applicant whose application is only for the development of affordable housing[*, as defined in ORS 197A.445, or publicly supported housing, as defined in ORS 456.250*], if the board [*affirms a quasi-judicial land use decision approving the application or*] reverses a quasi-judicial land use decision denying the application[*.*]**;**

(b) An applicant whose application is only for the development of housing and was approved by the local government, if the board affirms the decision; and

(c) The local government that approved a quasi-judicial land use decision described in paragraph (b) of this subsection.

(2) For housing other than affordable housing, the attorney fees specified in subsection (1)(b) and (c) of this section apply only within urban growth boundaries.

[*(2)*] **(3)** A party who was awarded attorney fees under this section or ORS 197.850 shall repay the fees plus any interest from the time of the judgment if the property upon which the fees are based is developed for a use other than [*affordable*] **the proposed** housing.

[*(3)*] **(4)** As used in this section:

[*(a) "Applicant" includes:*]

[*(A) An applicant with a funding reservation agreement with a public funder for the purpose of developing publicly supported housing;*]

[*(B) A housing authority, as defined in ORS 456.005;*]

[*(C) A qualified housing sponsor, as defined in ORS 456.548;*]

[*(D) A religious nonprofit corporation;*]

[*(E) A public benefit nonprofit corporation whose primary purpose is the development of affordable housing; and*]

[*(F) A local government that approved the application of an applicant described in this paragraph.*]

(a) "Affordable housing" means affordable housing, as defined in ORS 197A.445, or publicly supported housing, as defined in ORS 456.250.

(b) "Attorney fees" includes prelitigation legal expenses, including preparing **and processing** the application and supporting the application in local land use hearings or proceedings.

SECTION 11. Operative and applicable dates. (1) The amendments to ORS 197.843 by section 10 of this 2024 Act become operative on January 1, 2025.

(2) The amendments to ORS 197.843 by section 10 of this 2024 Act apply to decisions for which a notice of intent to appeal under ORS 197.830 is filed on or after January 1, 2025.

INFRASTRUCTURE SUPPORTING HOUSING PRODUCTION

SECTION 12. Sections 13 and 14 of this 2024 Act are added to and made a part of ORS chapter 285A.

SECTION 13. Capacity and support for infrastructure planning. The Oregon Business Development Department shall provide capacity and support for infrastructure planning to municipalities to enable them to plan and finance infrastructure for water, sewers and sanitation, stormwater and transportation consistent with opportunities to produce housing units at densities defined in section 55 (3)(a)(C) of this 2024 Act. "Capacity and support" includes assistance with local financing opportunities, state and federal grant navigation, writing, review and administration, resource sharing, regional collaboration support and technical support, including engineering and design assistance and other capacity or support as the department may designate by rule.

SECTION 14. Housing Infrastructure Support Fund. (1) The Housing Infrastructure Support Fund is established in the State Treasury, separate and distinct from the General Fund.

(2) The Housing Infrastructure Support Fund consists of moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly or otherwise.

(3) Interest earned by the fund shall be credited to the fund.

(4) Moneys in the fund are continuously appropriated to the Oregon Business Development Department to administer the fund and to implement section 13 of this 2024 Act.

SECTION 15. Sunset. (1) Sections 13 and 14 of this 2024 Act are repealed on January 2, 2030.

(2) Any unobligated moneys in the Housing Infrastructure Support Fund on January 2, 2030, must be transferred to the General Fund for general governmental purposes.

SECTION 16. Infrastructure recommendation and reporting. (1) On or before December 31, 2024, the Department of Land Conservation and Development, in consultation with the Housing and Community Services Department, the Oregon Business Development Department and other agencies that fund and support local infrastructure projects, shall submit a report to an appropriate interim committee of the Legislative Assembly in the manner provided in ORS 192.245 that includes a list of key considerations and metrics the Legislative Assembly could use to evaluate, screen and prioritize proposed local infrastructure projects that facilitate and support housing within an urban growth boundary.

(2) The Department of Land Conservation and Development shall facilitate an engagement process with local governments, tribal nations, the development community, housing advocates, conservation groups, property owners, community partners and other interested parties to inform the list of key considerations and metrics.

NOTE: Sections 17 through 23 were deleted by amendment. Subsequent sections were not renumbered.

HOUSING PROJECT REVOLVING LOANS

SECTION 24. As used in sections 24 to 35 of this 2024 Act:

(1) "Assessor," "tax collector" and "treasurer" mean the individual filling that county office so named or any county officer performing the functions of the office under another name.

(2) "County tax officers" and "tax officers" mean the assessor, tax collector and treasurer of a county.

(3) "Eligible costs" means the following costs associated with an eligible housing project:

(a) Infrastructure costs, including, but not limited to, system development charges;

(b) Predevelopment costs;

(c) Construction costs; and

(d) Land write-downs.

(4) "Eligible housing project" means a project to construct housing, or to convert a building from a nonresidential use to housing, that is:

(a) Affordable to households with low income or moderate income as those terms are defined in ORS 458.610;

(b) If for-sale property, a single-family dwelling, middle housing as defined in ORS 197A.420 or a multifamily dwelling that is affordable as described in paragraph (a) of this subsection continuously from initial sale for a period, to be established by the Housing and Community Services Department and the sponsoring jurisdiction, of not less than the term of the loan related to the for-sale property; or

(c) If rental property:

(A)(i) Middle housing as defined in ORS 197A.420;

(ii) A multifamily dwelling;

(iii) An accessory dwelling unit as defined in ORS 215.501; or

(iv) Any other form of affordable housing or moderate income housing; and

(B) Rented at a monthly rate that is affordable to households with an annual income not greater than 120 percent of the area median income, such affordability to be maintained for a period, to be established by the department and the sponsoring jurisdiction, of not less than the term of the loan related to the rental property.

(5) "Eligible housing project property" means the taxable real and personal property constituting the improvements of an eligible housing project.

(6) "Fee payer" means, for any property tax year, the person responsible for paying ad valorem property taxes on eligible housing project property to which a grant awarded under section 29 of this 2024 Act relates.

(7) "Fire district taxes" means property taxes levied by fire districts within whose territory all or a portion of eligible housing project property is located.

(8) "Nonexempt property" means property other than eligible housing project property in the tax account that includes eligible housing project property.

(9) "Nonexempt taxes" means the ad valorem property taxes assessed on nonexempt property.

(10) "Sponsoring jurisdiction" means:

(a)(A) A city with respect to eligible housing projects located within the city boundaries; or

(B) A county with respect to eligible housing projects located in urban unincorporated areas of the county; or

(b) The governing body of a city or county described in paragraph (a) of this subsection.

SECTION 25. (1)(a) A sponsoring jurisdiction may adopt by ordinance or resolution a program under which the sponsoring jurisdiction awards grants to developers for eligible costs.

(b) Before adopting the program, the sponsoring jurisdiction shall consult with the governing body of any city or county with territory inside the boundaries of the sponsoring jurisdiction.

(2) The ordinance or resolution shall set forth:

(a) The kinds of eligible housing projects for which a developer may seek a grant under the program; and

(b) Any eligibility requirements to be imposed on projects and developers in addition to those required under sections 24 to 35 of this 2024 Act.

(3) A grant award:

(a) Shall be in the amount determined under section 26 (3) of this 2024 Act; and

(b) May include reimbursement for eligible costs incurred for up to 12 months preceding the date on which the eligible housing project received local site approval.

(4) Eligible housing project property for which a developer receives a grant for eligible costs may not be granted any exemption, partial exemption or special assessment of ad valorem property taxes other than the exemption granted under section 30 of this 2024 Act.

(5) A sponsoring jurisdiction may amend an ordinance or resolution adopted pursuant to this section at any time. The amendments shall apply only to applications submitted under section 26 of this 2024 Act on or after the effective date of the ordinance or resolution.

SECTION 26. (1)(a) A sponsoring jurisdiction that adopts a grant program pursuant to section 25 of this 2024 Act shall prescribe an application process, including forms and deadlines, by which a developer may apply for a grant with respect to an eligible housing project.

(b) An application for a grant must include, at a minimum:

(A) A description of the eligible housing project;

(B) A detailed explanation of the affordability of the eligible housing project;

(C) An itemized description of the eligible costs for which the grant is sought;

(D) The proposed schedule for completion of the eligible housing project;

(E) A project pro forma demonstrating that the project would not be economically feasible but for receipt of the grant moneys; and

(F) Any other information, documentation or attestation that the sponsoring jurisdiction considers necessary or convenient for the application review process.

(c)(A) The project pro forma under paragraph (b)(E) of this subsection shall be on a form provided to the sponsoring jurisdiction by the Housing and Community Services Department and made available to grant applicants.

(B) The department may enter into an agreement with a third party to develop the project pro forma template.

(2)(a) The review of an application under this section shall be completed within 90 days following the receipt of the application by the sponsoring jurisdiction.

(b) Notwithstanding paragraph (a) of this subsection:

(A) The sponsoring jurisdiction may in its sole discretion extend the review process beyond 90 days if the volume of applications would make timely completion of the review process unlikely.

(B) The sponsoring jurisdiction may consult with a developer about the developer's application, and the developer, after the consultation, may amend the application on or before a deadline set by the sponsoring jurisdiction.

(3) The sponsoring jurisdiction shall:

(a) Review each application;

(b) Request that the county tax officers provide to the sponsoring jurisdiction the amounts determined under section 27 of this 2024 Act;

(c) Set the term of the loan that will fund the grant award for a period not to exceed the greater of:

(A) Ten years following July 1 of the first property tax year for which the completed eligible housing project property is estimated to be taken into account; or

(B) If agreed upon by the sponsoring jurisdiction and the department, the period required for the loan principal and fees to be repaid in full;

(d) Set the amount of the grant that may be awarded to the developer under section 29 (2) of this 2024 Act by multiplying the increment determined under section 27 (1)(c) of this 2024 Act by the term of the loan; and

(e)(A) Provisionally approve the application as submitted;

(B) Provisionally approve the application on terms other than those requested in the application; or

(C) Reject the application.

(4)(a) The sponsoring jurisdiction shall forward provisionally approved applications to the Housing and Community Services Department.

(b) The department shall review the provisionally approved applications for completeness, including, but not limited to, the completeness of the project pro forma submitted with the application under subsection (1)(b)(E) of this section and the amounts computed under section 27 (1) of this 2024 Act and notify the sponsoring jurisdiction of its determination.

(5)(a) If the department has determined that a provisionally approved application is incomplete, the sponsoring jurisdiction may:

(A) Consult with the applicant developer and reconsider the provisionally approved application after the applicant revises it; or

(B) Reject the provisionally approved application.

(b) If the department has determined that a provisionally approved application is complete, the approval shall be final.

(c) The sponsoring jurisdiction shall notify each applicant and the department of the final approval or rejection of an application and the amount of the grant award.

(d) The rejection of an application and the amount of a grant award may not be appealed, but a developer may reapply for a grant at any time within the applicable deadlines of the grant program for the same or another eligible housing project.

(6) Upon request by a sponsoring jurisdiction, the department may assist the sponsoring jurisdiction with, or perform on behalf of the sponsoring jurisdiction, any duty required under this section.

SECTION 27. (1) Upon request of the sponsoring jurisdiction under section 26 (3)(b) of this 2024 Act, the assessor of the county in which is located the eligible housing project to which an application being reviewed under section 26 of this 2024 Act relates shall:

(a) Using the last certified assessment roll for the property tax year in which the application is received under section 26 of this 2024 Act:

(A) Determine the amount of property taxes assessed against all tax accounts that include the eligible housing project property; and

(B) Subtract the amount of operating taxes as defined in ORS 310.055 and local option taxes as defined in ORS 310.202 levied by fire districts from the amount determined under subparagraph (A) of this paragraph.

(b) For the first property tax year for which the completed eligible housing project property is estimated to be taken into account:

(A) Determine the estimated amount of property taxes that will be assessed against all tax accounts that include the eligible housing project property; and

(B) Subtract the estimated amount of operating taxes and local option taxes levied by fire districts from the amount determined under subparagraph (A) of this paragraph.

(c) Determine the amount of the increment that results from subtracting the amount determined under subsection (1)(a) of this section from the amount determined under subsection (1)(b) of this section.

(2) As soon as practicable after determining amounts under this section, the county tax officers shall provide written notice to the sponsoring jurisdiction of the amounts.

SECTION 28. (1)(a) The Housing and Community Services Department shall develop a program to make loans to sponsoring jurisdictions to fund grants awarded under the sponsoring jurisdiction's grant program adopted pursuant to section 25 of this 2024 Act.

(b) The loans shall be interest free for the term set by the sponsoring jurisdiction under section 26 (3)(c) of this 2024 Act.

(2) For each application approved under section 26 (5)(b) of this 2024 Act, the Housing and Community Services Department shall:

(a) Enter into a loan agreement with the sponsoring jurisdiction for a payment in an amount equal to the total of:

(A) Loan proceeds in an amount equal to the grant award for the application set under section 26 (3)(d) of this 2024 Act; and

(B) The administrative costs set forth in subsection (3) of this section; and

(b) Pay to the sponsoring jurisdiction the total amount set forth in paragraph (a) of this subsection out of the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(3) The administrative costs referred to in subsection (2)(a)(B) of this section are:

(a) An amount not greater than five percent of the loan proceeds to reimburse the sponsoring jurisdiction for the costs of administering the grant program, other than the costs of tax administration; and

(b) An amount equal to one percent of the loan proceeds to be transferred to the county in which the sponsoring jurisdiction is situated to reimburse the county for the costs of the tax administration of the grant program by the county tax officers.

(4) The Housing and Community Services Department may assign any and all loan amounts made under this section to the Department of Revenue for collection as provided in ORS 293.250.

(5) The Housing and Community Services Department may:

(a) Consult with the Oregon Business Development Department about any of the powers and duties conferred on the Housing and Community Services Department by sections 24 to 35 of this 2024 Act; and

(b) Adopt any rule it considers necessary or convenient for the administration of sections 24 to 35 of this 2024 Act by the Housing and Community Services Department.

SECTION 29. (1) Upon entering into a loan agreement with the Housing and Community Services Department under section 28 of this 2024 Act, a sponsoring jurisdiction shall offer a grant agreement to each developer whose application was approved under section 26 (5)(b) of this 2024 Act.

(2) The grant agreement shall:

(a) Include a grant award in the amount set under section 26 (3)(d) of this 2024 Act; and

(b) Contain terms that:

(A) Are required under sections 24 to 35 of this 2024 Act or the ordinance or resolution adopted by the sponsoring jurisdiction pursuant to section 25 of this 2024 Act.

(B) Do not conflict with sections 24 to 35 of this 2024 Act or the ordinance or resolution adopted by the sponsoring jurisdiction pursuant to section 25 of this 2024 Act.

(3) Upon entering into a grant agreement with a developer, a sponsoring jurisdiction shall adopt an ordinance or resolution setting forth the details of the eligible housing project that is the subject of the agreement, including but not limited to:

(a) A description of the eligible housing project;

(b) An itemized description of the eligible costs;

(c) The amount and terms of the grant award;

(d) Written notice that the eligible housing project property is exempt from property taxation in accordance with section 30 of this 2024 Act; and

(e) A statement declaring that the grant has been awarded in response to the housing needs of communities within the sponsoring jurisdiction.

(4) Unless otherwise specified in the grant agreement, as soon as practicable after the ordinance or resolution required under subsection (3) of this section becomes effective, the sponsoring jurisdiction shall distribute the loan proceeds received from the department under section 28 (2)(a)(A) of this 2024 Act to the developer as the grant moneys awarded under this section.

(5) The sponsoring jurisdiction shall forward to the tax officers of the county in which the eligible housing project is located a copy of the grant agreement, the ordinance or resolution and any other material the sponsoring jurisdiction considers necessary for the tax officers to perform their duties under sections 24 to 35 of this 2024 Act or the ordinance or resolution.

(6) Upon request, the department may assist the sponsoring jurisdiction with, or perform on behalf of the sponsoring jurisdiction, any duty required under this section.

SECTION 30. (1) Upon receipt of the copy of a grant agreement and ordinance or resolution from the sponsoring jurisdiction under section 29 (5) of this 2024 Act, the assessor of the county in which eligible housing project property is located shall:

(a) Exempt the eligible housing project property in accordance with this section;

(b) Assess and tax the nonexempt property in the tax account as other similar property is assessed and taxed; and

(c) Submit a written report to the sponsoring jurisdiction setting forth the assessor's estimate of the amount of:

(A) The real market value of the exempt eligible housing project property; and

(B) The property taxes on the exempt eligible housing project property that would have been collected if the property were not exempt.

(2)(a) The exemption shall first apply to the first property tax year that begins after completion of the eligible housing project to which the grant relates.

(b) The eligible housing project property shall be disqualified from the exemption on the earliest of:

(A) July 1 of the property tax year immediately succeeding the date on which the fee payment obligation under section 32 of this 2024 Act that relates to the eligible housing project is repaid in full;

(B) The date on which the annual fee imposed on the fee payer under section 32 of this 2024 Act becomes delinquent;

(C) The date on which foreclosure proceedings are commenced as provided by law for delinquent nonexempt taxes assessed with respect to the tax account that includes the eligible housing project; or

(D) The date on which a condition specified in section 33 (1) of this 2024 Act occurs.

(c) After the eligible housing project property has been disqualified from the exemption under this subsection, the property shall be assessed and taxed as other similar property is assessed and taxed.

(3) For each tax year that the eligible housing project property is exempt from taxation, the assessor shall enter a notation on the assessment roll stating:

(a) That the property is exempt under this section; and

(b) The presumptive number of property tax years for which the exemption is granted, which shall be the term of the loan agreement relating to the eligible housing project set under section 26 (3)(c) of this 2024 Act.

SECTION 31. (1) Repayment of loans made under section 28 of this 2024 Act shall begin, in accordance with section 32 of this 2024 Act, after completion of the eligible housing project funded by the grant to which the loan relates.

(2)(a) The sponsoring jurisdiction shall determine the date of completion of an eligible housing project.

(b)(A) If an eligible housing project is completed before July 1 of the assessment year, repayment shall begin with the property tax year that begins on July 1 of the assessment year.

(B) If an eligible housing project is completed on or after July 1 of the assessment year, repayment shall begin with the property tax year that begins on July 1 of the succeeding assessment year.

(c) After determining the date of completion under paragraph (a) of this subsection, the sponsoring jurisdiction shall notify the Housing and Community Services Department and the county tax officers of the determination.

(3) A loan shall remain outstanding until repaid in full.

SECTION 32. (1) The fee payer for eligible housing project property that has been granted exemption under section 30 of this 2024 Act shall pay an annual fee for the term that shall be the presumptive number of years for which the property is granted exemption under section 30 (3)(b) of this 2024 Act.

(2)(a) The amount of the fee for the first property tax year in which repayment of the loan is due under section 31 (1) of this 2024 Act shall equal the total of:

(A) The portion of the increment determined under section 27 (1)(c) of this 2024 Act that is attributable to the eligible housing project property to which the fee relates; and

(B) The administrative costs described in section 28 (3) of this 2024 Act divided by the term of the grant agreement entered into under section 29 of this 2024 Act.

(b) For each subsequent property tax year, the amount of the fee shall be 103 percent of the amount of the fee for the preceding property tax year.

(3)(a) Not later than July 15 of each property tax year during the term of the fee obligation, the sponsoring jurisdiction shall certify to the assessor each fee amount that became due under this section on or after July 16 of the previous property tax year from fee payers with respect to eligible housing projects located in the sponsoring jurisdiction.

(b) The assessor shall place each fee amount on the assessment and tax rolls of the county and notify:

(A) The sponsoring jurisdiction of each fee amount and the aggregate of all fee amounts imposed with respect to eligible housing project property located in the sponsoring jurisdiction.

(B) The Housing and Community Services Department of each fee amount and the aggregate of all fee amounts with respect to all eligible housing project property located in the county.

(4)(a) The assessor shall include on the tax statement of each tax account that includes exempt eligible housing project property the amount of the fee imposed on the fee payer with respect to the eligible housing project property.

(b) The fee shall be collected and enforced in the same manner as ad valorem property taxes, including nonexempt taxes, are collected and enforced.

(5)(a) For each property tax year in which a fee is payable under this section, the treasurer shall:

(A) Estimate the amount of operating taxes as defined in ORS 310.055 and local option taxes as defined in ORS 310.202 levied by fire districts that would have been collected on eligible housing project property if the property were not exempt;

(B) Distribute out of the fee moneys the amounts determined under subparagraph (A) of this paragraph to the respective fire districts when other ad valorem property taxes are distributed under ORS 311.395; and

(C) Transfer the net fee moneys to the Housing and Community Services Department for deposit in the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act in repayment of the loans to which the fees relate.

(b) Nonexempt taxes shall be distributed in the same manner as other ad valorem property taxes are distributed.

(6) Any person with an interest in the eligible housing project property on the date on which any fee amount becomes due shall be jointly and severally liable for payment of the fee amount.

(7) Any loan amounts that have not been repaid when the fee payer has discharged its obligations in full under this section remain the obligation of the sponsoring jurisdiction that obtained the loan from the department under section 28 of this 2024 Act.

(8) Any fee amounts collected in excess of the loan amount shall be distributed in the same manner as other ad valorem property taxes are distributed.

SECTION 33. (1)(a) A developer that received a grant award under section 29 of this 2024 Act shall become liable for immediate payment of any outstanding annual fee payments imposed under section 32 of this 2024 Act for the entire term of the fee if:

(A) The developer has not completed the eligible housing project within three years following the date on which the grant moneys were distributed to the developer;

(B) The eligible housing project changes substantially from the project for which the developer's application was approved such that the project would not have been eligible for the grant; or

(C) The developer has not complied with a requirement specified in the grant agreement.

(b) The sponsoring jurisdiction may, in its sole discretion, extend the date on which the eligible housing project must be completed.

(2) If the sponsoring jurisdiction discovers that a developer willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain a grant with respect to an eligible housing project, the sponsoring jurisdiction may impose on the developer a penalty not to exceed 20 percent of the amount of the grant so obtained, plus any applicable interest and fees associated with the costs of collection.

(3) Any amounts imposed under subsection (1) or (2) of this section shall be a lien on the eligible housing project property and the nonexempt property in the tax account.

(4) The sponsoring jurisdiction shall provide written notice of any amounts that become due under subsections (1) and (2) of this section to the county tax officers and the Housing and Community Services Department.

(5)(a) Any and all amounts required to be paid under this section shall be considered to be liquidated and delinquent, and the Housing and Community Services Department shall assign such amounts to the Department of Revenue for collection as provided in ORS 293.250.

(b) Amounts collected under this subsection shall be deposited, net of any collection charges, in the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

SECTION 34. (1) Not later than June 30 of each year in which a grant agreement entered into under section 29 of this 2024 Act is in effect, a developer that is party to the agreement shall submit a report to the sponsoring jurisdiction in which the eligible housing project is located that contains:

(a) The status of the construction or conversion of the eligible housing project property, including an estimate of the date of completion;

(b) An itemized description of the uses of the grant moneys; and

(c) Any information the sponsoring jurisdiction considers important for evaluating the eligible housing project and the developer's performance under the terms of the grant agreement.

(2) Not later than August 15 of each year, each sponsoring jurisdiction shall submit to the Housing and Community Services Department a report containing such information re-

lating to eligible housing projects within the sponsoring jurisdiction as the department requires.

(3)(a) Not later than November 15 of each year, the department shall submit, in the manner required under ORS 192.245, a report to the interim committees of the Legislative Assembly related to housing.

(b) The report shall set forth in detail:

(A) The information received from sponsoring jurisdictions under subsection (2) of this section;

(B) The status of the repayment of all outstanding loans made under section 28 of this 2024 Act and of the payment of all fees imposed under section 32 of this 2024 Act and all amounts imposed under section 33 of this 2024 Act; and

(C) The cumulative experience of the program developed and implemented under sections 24 to 35 of this 2024 Act.

(c) The report may include recommendations for legislation.

SECTION 35. (1) The Housing Project Revolving Loan Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Housing Project Revolving Loan Fund shall be credited to the fund.

(2) Moneys in the fund may be invested as provided by ORS 293.701 to 293.857, and the earnings from the investments shall be credited to the fund.

(3) Moneys in the Housing Project Revolving Loan Fund shall consist of:

(a) Amounts appropriated or otherwise transferred or credited to the fund by the Legislative Assembly;

(b) Net fee moneys transferred under section 32 of this 2024 Act;

(c) Amounts deposited in the fund under section 33 of this 2024 Act;

(d) Interest and other earnings received on moneys in the fund; and

(e) Other moneys or proceeds of property from any public or private source that are transferred, donated or otherwise credited to the fund.

(4) Moneys in the Housing Project Revolving Loan Fund are continuously appropriated to the Housing and Community Services Department for the purpose of paying amounts determined under section 28 of this 2024 Act.

(5) Moneys in the Housing Project Revolving Loan Fund at the end of a biennium shall be retained in the fund and used for the purposes set forth in subsection (4) of this section.

SECTION 36. (1) The Housing and Community Services Department shall have developed and begun operating the loan program that the department is required to develop under section 28 of this 2024 Act, including regional trainings and outreach for jurisdictional partners, no later than June 30, 2025.

(2) In the first two years in which the loan program is operating, the department may not expend an amount in excess of two-thirds of the moneys appropriated to the department for the purpose under section 62 of this 2024 Act.

HOUSING LAND USE ADJUSTMENTS

SECTION 37. Sections 38 to 41 of this 2024 Act are added to and made a part of ORS chapter 197A.

SECTION 38. Mandatory adjustment to housing development standards. (1) As used in sections 38 to 41 of this 2024 Act:

(a) "Adjustment" means a deviation from an existing land use regulation.

(b) "Adjustment" does not include:

(A) A request to allow a use of property not otherwise permissible under applicable zoning requirements;

(B) Deviations from land use regulations or requirements related to accessibility, affordability, fire ingress or egress, safety, local tree codes, hazardous or contaminated site

clean-up, wildlife protection, or statewide land use planning goals relating to natural resources, natural hazards, the Willamette River Greenway, estuarine resources, coastal shorelands, beaches and dunes or ocean resources;

(C) A complete waiver of land use regulations or any changes beyond the explicitly requested and allowed adjustments; or

(D) Deviations to requirements related to the implementation of fire or building codes, federal or state air, water quality or surface, ground or stormwater requirements, or requirements of any federal, state or local law other than a land use regulation.

(2) Except as provided in section 39 of this 2024 Act, a local government shall grant a request for an adjustment in an application to develop housing as provided in this section. An application qualifies for an adjustment under this section only if the following conditions are met:

(a) The application is for a building permit or a quasi-judicial, limited or ministerial land use decision;

(b) The development is on lands zoned to allow for residential uses, including mixed-use residential;

(c) The residential development is for densities not less than those required under section 55 (3)(a)(C) of this 2024 Act;

(d) The development is within an urban growth boundary, not including lands that have not been annexed by a city;

(e) The development is of net new housing units in new construction projects, including:

(A) Single-family or multifamily;

(B) Mixed-use residential where at least 75 percent of the developed floor area will be used for residential uses;

(C) Manufactured dwelling parks;

(D) Accessory dwelling units; or

(E) Middle housing as defined in ORS 197A.420;

(f) The application requests not more than 10 distinct adjustments to development standards as provided in this section. A "distinct adjustment" means:

(A) An adjustment to one of the development standards listed in subsection (4) of this section where each discrete adjustment to a listed development standard that includes multiple component standards must be counted as an individual adjustment; or

(B) An adjustment to one of the development standards listed in subsection (5) of this section where each discrete adjustment to a listed development standard that includes multiple component standards must be counted as an individual adjustment; and

(g) The application states how at least one of the following criteria apply:

(A) The adjustments will enable development of housing that is not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations;

(B) The adjustments will enable development of housing that reduces the sale or rental prices per residential unit;

(C) The adjustments will increase the number of housing units within the application;

(D) All of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to moderate income households as defined in ORS 456.270 for a minimum of 30 years;

(E) At least 20 percent of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to low income households as defined in ORS 456.270 for a minimum of 60 years;

(F) The adjustments will enable the provision of accessibility or visitability features in housing units that are not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations; or

(G) All of the units in the application are subject to a zero equity, limited equity, or shared equity ownership model including resident-owned cooperatives and community land

trusts making them affordable to moderate income households as described in ORS 456.270 to 456.295 for a period of 90 years.

(3) A decision on an application for an adjustment made under this section is a limited land use decision. Only the applicant may appeal the decision. No notice of the decision is required if the application is denied, other than notice to the applicant. In implementing this subsection, a local government may:

(a) Use an existing process, or develop and apply a new process, that complies with the requirements of this subsection; or

(b) Directly apply the process set forth in this subsection.

(4) A local government shall grant an adjustment to the following development standards:

(a) Side or rear setbacks, for an adjustment of not more than 10 percent.

(b) For an individual development project, the common area, open space or area that must be landscaped on the same lot or parcel as the proposed housing, for a reduction of not more than 25 percent.

(c) Parking minimums.

(d) Minimum lot sizes, not more than a 10 percent adjustment, and including not more than a 10 percent adjustment to lot widths or depths.

(e) Maximum lot sizes, not more than a 10 percent adjustment, including not more than a 10 percent adjustment to lot width or depths and only if the adjustment results in:

(A) More dwelling units than would be allowed without the adjustment; and

(B) No reduction in density below the minimum applicable density.

(f) Building lot coverage requirements for up to a 10 percent adjustment.

(g) For manufactured dwelling parks, middle housing as defined in ORS 197A.420, multi-family housing and mixed-use residential housing:

(A) Requirements for bicycle parking that establish:

(i) The minimum number of spaces for use by the residents of the project, provided the application includes at least one-half space per residential unit; or

(ii) The location of the spaces, provided that lockable, covered bicycle parking spaces are within or adjacent to the residential development;

(B) For uses other than cottage clusters, as defined in ORS 197A.420 (1)(c)(D), building height maximums that:

(i) Are in addition to existing applicable height bonuses, if any; and

(ii) Are not more than an increase of the greater of:

(I) One story; or

(II) A 20 percent increase to base zone height with rounding consistent with methodology outlined in city code, if any;

(C) Unit density maximums, not more than an amount necessary to account for other adjustments under this section; and

(D) Prohibitions, for the ground floor of a mixed-use building, against:

(i) Residential uses except for one face of the building that faces the street and is within 20 feet of the street; and

(ii) Nonresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments.

(5) A local government shall grant an adjustment to design standards that regulate:

(a) Facade materials, color or pattern.

(b) Facade articulation.

(c) Roof forms and materials.

(d) Entry and garage door materials.

(e) Garage door orientation, unless the building is adjacent to or across from a school or public park.

(f) Window materials, except for bird-safe glazing requirements.

(g) Total window area, for up to a 30 percent adjustment, provided the application includes at least 12 percent of the total facade as window area.

(h) For manufactured dwelling parks, middle housing as defined in ORS 197A.420, multifamily housing and mixed-use residential:

(A) Building orientation requirements, not including transit street orientation requirements.

(B) Building height transition requirements, not more than a 50 percent adjustment from the base zone.

(C) Requirements for balconies and porches.

(D) Requirements for recesses and offsets.

SECTION 39. Mandatory adjustments exemption process. (1) A local government may apply to the Housing Accountability and Production Office for an exemption to section 38 of this 2024 Act only as provided in this section. After the application is made, section 38 of this 2024 Act does not apply to the applicant until the office denies the application or revokes the exemption.

(2) To qualify for an exemption under this section, the local government must demonstrate that:

(a) The local government reviews requested design and development adjustments for all applications for the development of housing that are under the jurisdiction of that local government;

(b) All listed development and design adjustments under section 38 (4) and (5) of this 2024 Act are eligible for an adjustment under the local government's process; and

(c)(A) Within the previous 5 years the city has approved 90 percent of received adjustment requests; or

(B) The adjustment process is flexible and accommodates project needs as demonstrated by testimonials of housing developers who have utilized the adjustment process within the previous five years.

(3) Upon receipt of an application under this section, the office shall allow for public comment on the application for a period of no less than 45 days. The office shall enter a final order on the adjustment exemption within 120 days of receiving the application. The approval of an application may not be appealed.

(4) In approving an exemption, the office may establish conditions of approval requiring that the city demonstrate that it continues to meet the criteria under subsection (2) of this section.

(5) Local governments with an approved or pending exemption under this section shall clearly and consistently notify applicants, including prospective applicants seeking to request an adjustment, that are engaged in housing development:

(a) That the local government is employing a local process in lieu of section 38 of this 2024 Act;

(b) Of the development and design standards for which an applicant may request an adjustment in a housing development application; and

(c) Of the applicable criteria for the adjustment application.

(6) In response to a complaint and following an investigation, the office may issue an order revoking an exemption issued under this section if the office determines that the local government is:

(a) Not approving adjustments as required by the local process or the terms of the exemption;

(b) Engaging in a pattern or practice of violating housing-related statutes or implementing policies that create unreasonable cost or delays to housing production under ORS 197.320 (13)(a); or

(c) Failing to comply with conditions of approval adopted under subsection (4) of this section.

SECTION 40. Temporary exemption authority. Before January 1, 2025, notwithstanding section 39 of this 2024 Act:

(1) Cities may deliver applications for exemption under section 39 of this 2024 Act to the Department of Land Conservation and Development; and

(2) The Department of Land Conservation and Development may perform any action that the Housing Accountability and Production Office may take under section 39 of this 2024 Act. Decisions and actions of the department under this section are binding on the office.

SECTION 41. Reporting. (1) A city required to provide a report under ORS 197A.110 shall include as part of that report information reasonably requested from the Department of Land Conservation and Development on residential development produced through approvals of adjustments granted under section 38 of this 2024 Act. The department may not develop a separate process for collecting this data or otherwise place an undue burden on local governments.

(2) On or before September 15 of each even-numbered year, the department shall provide a report to an interim committee of the Legislative Assembly related to housing in the manner provided in ORS 192.245 on the data collected under subsection (1) of this section. The committee shall invite the League of Oregon Cities to provide feedback on the report and the efficacy of section 38 of this 2024 Act.

SECTION 42. Operative date. Sections 38 to 41 of this 2024 Act become operative on January 1, 2025.

SECTION 43. Sunset. Sections 38 to 41 of this 2024 Act are repealed on January 2, 2032.

LIMITED LAND USE DECISIONS

SECTION 44. ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196, 197 and 197A, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196, 197 and 197A.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines are advisory and do not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360;

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or

(H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

(c) Does not include a decision by a school district to close a school;

(d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

(C) A state agency action subject to ORS 197.180 (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12)**(a)** "Limited land use decision"[*:*]

[*(a)*] means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(C) The approval or denial of an application for a replat.

(D) The approval or denial of an application for a property line adjustment.

(E) The approval or denial of an application for an extension, alteration or expansion of a nonconforming use.

(b) **"Limited land use decision"** does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or Metro or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that Metro may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195, 197 and 197A.

(19) "Special district" means any unit of local government, other than a city, county, Metro or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban growth boundary" means an acknowledged urban growth boundary contained in a city or county comprehensive plan or adopted by Metro under ORS 268.390 (3).

(21) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

(22) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(23) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 45. ORS 197.195 is amended to read:

197.195. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.797.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction

of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.797. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision.

(6) A city shall apply the procedures in this section, and only the procedures in this section, to a limited land use decision, even if the city has not incorporated limited land use decisions into land use regulations, as required by ORS 197.646 (3), except that a limited land use decision that is made under land use standards that do not require interpretation or the exercise of policy or legal judgment may be made by city staff using a ministerial process.

SECTION 45a. Section 46 of this 2024 Act is added to and made a part of ORS chapter 197.

SECTION 46. Applicability of limited land use decision to housing development. (1) The Housing Accountability and Production Office may approve a hardship exemption or time extension to ORS 197.195 (6), during which time ORS 197.195 (6) does not apply to decisions by a local government.

(2) The office may grant an exemption or time extension only if the local government demonstrates that a substantial hardship would result from the increased costs or staff capacity needed to implement procedures as required under ORS 197.195 (6).

(3) The office shall review exemption or time extension requests under the deadlines provided in section 39 (3) of this 2024 Act.

SECTION 47. Sunset. Section 46 of this 2024 Act is repealed on January 2, 2032.

SECTION 47a. Operative date. Section 46 of this 2024 Act and the amendments to ORS 197.015 and 197.195 by sections 44 and 45 of this 2024 Act become operative on January 1, 2025.

ONE-TIME SITE ADDITIONS TO URBAN GROWTH BOUNDARIES

SECTION 48. Sections 49 to 59 of this 2024 Act are added to and made a part of ORS chapter 197A.

SECTION 49. Definitions. As used in sections 49 to 59 of this 2024 Act:

(1) "Net residential acre" means an acre of residentially designated buildable land, not including rights of way for streets, roads or utilities or areas not designated for development due to natural resource protections or environmental constraints.

(2) "Site" means a lot or parcel or contiguous lots or parcels, or both, with or without common ownership.

SECTION 50. City addition of sites outside of Metro. (1) Notwithstanding any other provision of ORS chapter 197A, a city outside of Metro may add a site to the city's urban growth boundary under sections 49 to 59 of this 2024 Act, if:

(a) The site is adjacent to the existing urban growth boundary of the city or is separated from the existing urban growth boundary by only a street or road;

(b) The site is:

(A) Designated as an urban reserve under ORS 197A.230 to 197A.250, including a site whose designation is adopted under ORS 197.652 to 197.658;

(B) Designated as nonresource land; or

(C) Subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland;

(c) The city has not previously adopted an urban growth boundary amendment or exchange under sections 49 to 59 of this 2024 Act;

(d) The city has demonstrated a need for the addition under section 52 of this 2024 Act;

(e) The city has requested and received an application as required under sections 53 and 54 of this 2024 Act;

(f) The total acreage of the site:

(A) For a city with a population of 25,000 or greater, does not exceed 100 net residential acres; or

(B) For a city with a population of less than 25,000, does not exceed 50 net residential acres; and

(g)(A) The city has adopted a binding conceptual plan for the site that satisfies the requirements of section 55 of this 2024 Act; or

(B) The added site does not exceed 15 net residential acres and satisfies the requirements of section 56 of this 2024 Act.

(2) A county shall approve an amendment to an urban growth boundary made under this section that complies with sections 49 to 59 of this 2024 Act and shall cooperate with a city to facilitate the coordination of functions under ORS 195.020 to facilitate the city's annexation and the development of the site. The county's decision is not a land use decision.

(3) Notwithstanding ORS 197.626, an action by a local government under sections 49 to 59 of this 2024 Act is not a land use decision as defined in ORS 197.015.

SECTION 51. Petition for additions of sites to Metro urban growth boundary. (1) A city within Metro may petition Metro to add a site within the Metro urban growth boundary if the site:

(a) Satisfies the requirements of section 50 (1) of this 2024 Act; and

(b) Is designated as an urban reserve.

(2)(a) Within 120 days of receiving a petition under this section, Metro shall determine whether the site would substantially comply with the applicable provisions of sections 49 to 59 of this 2024 Act.

(b) If Metro determines that a petition does not substantially comply, Metro shall:

(A) Notify the city of deficiencies in the petition, specifying sufficient detail to allow the city to remedy any deficiency in a subsequent resubmittal; and

(B) Allow the city to amend its conceptual plan and resubmit it as a petition to Metro under this section.

(c) If Metro determines that a petition does comply, notwithstanding any other provision of ORS chapter 197A, Metro shall adopt amendments to its urban growth boundary to include the site in the petition, unless the amendment would result in more than 300 total net residential acres added under this subsection.

(3) If the net residential acres included in petitions that Metro determines are in compliance on or before July 1, 2025, total less than 300 net residential acres, Metro shall adopt amendments to its urban growth boundary under subsection (2)(c) of this section:

(a) On or before November 1, 2025, for all petitions deemed compliant on or before July 1, 2025; or

(b) Within 120 days after a petition is deemed compliant after July 1, 2025, in the order in which the petitions are received.

(4) If the net residential acres included in petitions that Metro determines are in compliance on or before July 1, 2025, total 300 or more net residential acres, on or before January 1, 2027, Metro shall adopt amendments to its urban growth boundary under subsection (2)(c) of this section to include the sites in those petitions that Metro determines will:

(a) Best comply with the provisions of section 55 of this 2024 Act; and

(b) Maximize the development of needed housing.

(5) Metro may not conduct a hearing to review or select petitions or adopt amendments to its urban growth boundary under this section.

SECTION 52. City demonstration of need. A city may not add, or petition to add, a site under sections 49 to 59 of this 2024 Act, unless:

(1) The city has demonstrated a need for additional land based on the following factors:

(a)(A) In the previous 20 years there have been no urban growth boundary expansions for residential use adopted by a city or by Metro in a location adjacent to the city; and

(B) The city does not have within the existing urban growth boundary an undeveloped, contiguous tract that is zoned for residential use that is larger than 20 net residential acres; or

(b) Within urban growth boundary expansion areas for residential use adopted by the city over the previous 20 years, or by Metro in locations adjacent to the city, 75 percent of the lands either:

(A) Are developed; or

(B) Have an acknowledged comprehensive plan with land use designations in preparation for annexation and have a public facilities plan and associated financing plan.

(2) The city has demonstrated a need for affordable housing, based on:

(a) Having a greater percentage of severely cost-burdened households than the average for this state based on the Comprehensive Housing Affordability Strategy data from the United States Department of Housing and Urban Development; or

(b) At least 25 percent of the renter households in the city being severely rent burdened as indicated under the most recent housing equity indicator data under ORS 456.602 (2)(g).

SECTION 53. City solicitation of site applications. (1) Before a city may select a site for inclusion within the city's or Metro's urban growth boundary under sections 49 to 59 of this 2024 Act, a city must provide public notice that includes:

(a) The city's intention to select a site for inclusion within the city's urban growth boundary.

(b) Each basis under which the city has determined that it qualifies to include a site under section 52 of this section.

(c) A deadline for submission of applications under this section that is at least 45 days following the date of the notice.

(d) A description of the information, form and format required of an application, including the requirements of section 55 (2) of this 2024 Act.

(2) A copy of the notice of intent under this section must be provided to:

(a) Each county in which the city resides;

(b) Each special district providing urban services within the city's urban growth boundary;

(c) The Department of Land Conservation and Development; and

(d) Metro, if the city is within Metro.

SECTION 54. City review of site applications. (1) After the deadline for submission of applications established under section 55 of this 2024 Act, the city shall:

(a) Review applications filed for compliance with sections 49 to 59 of this 2024 Act.

(b) For each completed application that complies with sections 49 to 59 of this 2024 Act, provide notice to the residents of the proposed site area who were not signatories to the application.

(c) Provide opportunities for public participation in selecting a site, including, at least:

(A) One public comment period;

(B)(i) One meeting of the city's planning commission at which public testimony is considered;

(ii) One meeting of the city's council at which public testimony is considered; or

(iii) One public open house; and

(C) Notice on the city's website or published in a paper of record at least 14 days before:

(i) A meeting under subparagraph (B) of this paragraph; and

(ii) The beginning of a comment period under subparagraph (A) of this paragraph.

(d) Consult with, request necessary information from and provide the opportunity for written comment from:

(A) The owners of each lot or parcel within the site;

(B) If the city does not currently exercise land use jurisdiction over the entire site, the governing body of each county with land use jurisdiction over the site;

(C) Any special district that provides urban services to the site; and

(D) Any public or private utility that provides utilities to the site.

(2) An application filed under this section must:

(a) Be completed for each property owner or group of property owners that are proposing an urban growth boundary amendment under sections 49 to 59 of this 2024 Act;

(b) Be in writing in a form and format as required by the city;

(c) Specify the lots or parcels that are the subject of the application;

(d) Be signed by all owners of lots or parcels included within the application; and

(e) Include each owner's signed consent to annexation of the properties if the site is added to the urban growth boundary.

(3) If the city has received approval from all property owners of such lands, in writing in a form and format specified by the city, the governing body of the city may select an application and the city shall adopt a conceptual plan as described in section 55 of this 2024 Act for all or a portion of the lands contained within the application.

(4) A conceptual plan adopted under subsection (3) of this section must include findings identifying reasons for inclusion of lands within the conceptual plan and reasons why lands, if any, submitted as part of an application that was partially approved were not included within the conceptual plan.

SECTION 55. Conceptual plan for added sites. (1) As used in this section:

(a) "Affordable units" means residential units described in subsection (3)(f)(A) or (4) of this section.

(b) "Market rate units" means residential units other than affordable units.

(2) Before adopting an urban growth boundary amendment under section 50 of this 2024 Act or petitioning Metro under section 51 of this 2024 Act, for a site larger than 15 net residential acres, a city shall adopt a binding conceptual plan as an amendment to its comprehensive plan.

(3) The conceptual plan must:

(a) Establish the total net residential acres within the site and must require for those residential areas:

(A) A diversity of housing types and sizes, including middle housing, accessible housing and other needed housing;

(B) That the development will be on lands zoned for residential or mixed-use residential uses; and

(C) The development will be built at net residential densities not less than:

(i) Seventeen dwelling units per net residential acre if sited within the Metro urban growth boundary;

(ii) Ten units per net residential acre if sited in a city with a population of 30,000 or greater;

(iii) Six units per net residential acre if sited in a city with a population of 2,500 or greater and less than 30,000; or

(iv) Five units per net residential acre if sited in a city with a population less than 2,500;

(b) Designate within the site:

(A) Recreation and open space lands; and

(B) Lands for commercial uses, either separate or as a mixed use, that:

(i) Primarily serve the immediate surrounding housing;

(ii) Provide goods and services at a smaller scale than provided on typical lands zoned for commercial use; and

(iii) Are provided at the minimum amount necessary to support and integrate viable commercial and residential uses;

(c) If the city has a population of 5,000 or greater, include a transportation network for the site that provides diverse transportation options, including walking, bicycling and transit use if public transit services are available, as well as sufficient connectivity to existing and

planned transportation network facilities as shown in the local government's transportation system plan as defined in Land Conservation and Development Commission rules;

(d) Demonstrate that protective measures will be applied to the site consistent with the statewide land use planning goals for:

(A) Open spaces, scenic and historic areas or natural resources;

(B) Air, water and land resources quality;

(C) Areas subject to natural hazards;

(D) The Willamette River Greenway;

(E) Estuarine resources;

(F) Coast shorelands; or

(G) Beaches and dunes;

(e) Include a binding agreement among the city, each owner within the site and any other necessary public or private utility provider, local government or district, as defined in ORS 195.060, or combination of local governments and districts that the site will be served with all necessary urban services as defined in ORS 195.065, or an equivalent assurance; and

(f) Include requirements that ensure that:

(A) At least 30 percent of the residential units are subject to affordability restrictions, including but not limited to affordable housing covenants, as described in ORS 456.270 to 456.295, that require for a period of not less than 60 years that the units be:

(i) Available for rent, with or without government assistance, by households with an income of 80 percent or less of the area median income as defined in ORS 456.270; or

(ii) Available for purchase, with or without government assistance, by households with an income of 130 percent or less of the area median income;

(B) The construction of all affordable units has commenced before the city issues certificates of occupancy to the last 15 percent of market rate units;

(C) All common areas and amenities are equally available to residents of affordable units and of market rate units and properties designated for affordable units are dispersed throughout the site; and

(D) The requirement for affordable housing units is recorded before the building permits are issued for any property within the site, and the requirements contain financial penalties for noncompliance.

(4) A city may require greater affordability requirements for residential units than are required under subsection (3)(f)(A) of this section, provided that the city significantly and proportionally offsets development costs related to:

(a) Permits or fees;

(b) System development charges;

(c) Property taxes; or

(d) Land acquisition and predevelopment costs.

SECTION 56. Alternative for small additions. (1) A city that intends to add 15 net residential acres or less is not required to adopt a conceptual plan under section 55 of this 2024 Act if the city has entered into:

(a) Enforceable and recordable agreements with each landowner of a property within the site to ensure that the site will comply with the affordability requirements described in section 55 (3)(f) of this 2024 Act; and

(b) A binding agreement with each owner within the site and any other necessary public or private utility provider, local government or district, as defined in ORS 195.060, or combination of local governments and districts to ensure that the site will be served with all necessary urban services as defined in ORS 195.065.

(2) This section does not apply to a city within Metro.

SECTION 57. Department approval of site additions. (1) Within 21 days after the adoption of an amendment to an urban growth boundary or the adoption or amendment of a conceptual plan under sections 49 to 59 of this 2024 Act, and the approval by a county if required

under section 50 (2) of this 2024 Act, the conceptual plan or amendment must be submitted to the Department of Land Conservation and Development for review. The submission must be made by:

(a) The city, for an amendment under section 50 or 58 of this 2024 Act; or

(b) Metro, for an amendment under section 51 or 58 of this 2024 Act.

(2) Within 60 days after receiving a submittal under subsection (1) of this section, the department shall:

(a) Review the submittal for compliance with the provisions of sections 49 to 59 of this 2024 Act.

(b)(A) If the submittal substantially complies with the provisions of sections 49 to 59 of this 2024 Act, issue an order approving the submittal; or

(B) If the submittal does not substantially comply with the provisions of sections 49 to 59 of this 2024 Act, issue an order remanding the submittal to the city or to Metro with a specific determination of deficiencies in the submittal and with sufficient detail to identify a specific remedy for any deficiency in a subsequent resubmittal.

(3) If a conceptual plan is remanded to Metro under subsection (2)(b) of this section:

(a) The department shall notify the city; and

(b) The city may amend its conceptual plan and resubmit a petition to Metro under section 51 of this 2024 Act.

(4) Judicial review of the department's order:

(a) Must be as a review of orders other than a contested case under ORS 183.484; and

(b) May be initiated only by the city or an owner of a proposed site.

(5) Following the approval of a submittal under this section, a local government must include the added lands in any future inventory of buildable lands or determination of housing capacity under ORS 197A.270, 197A.280, 197A.335 or 197A.350.

SECTION 58. Alternative urban growth boundary land exchange. (1) In lieu of amending its urban growth boundary under any other process provided by sections 49 to 59 of this 2024 Act, Metro or a city outside of Metro may amend its urban growth boundary to add one or more sites described in section 51 (1)(a) and (b) of this 2024 Act to the urban growth boundary and to remove one or more tracts of land from the urban growth boundary as provided in this section.

(2) The acreage of the added site and removed lands must be roughly equivalent.

(3) The removed lands must have been zoned for residential uses.

(4) The added site must be zoned for residential uses at the same or greater density than the removed lands.

(5)(a) Except as provided in paragraph (b) of this subsection, land may be removed from an urban growth boundary under this section without landowner consent.

(b) A landowner may not appeal the removal of the landowner's land from an urban growth boundary under this section unless the landowner agrees to enter into a recorded agreement with Metro or the city in which the landowner would consent to annexation and development of the land within 20 years if the land remains in the urban growth boundary.

(6) Review of an exchange of lands made under this section may only be made by:

(a) For cities outside of Metro, the county as provided in section 50 (2) of this 2024 Act and by the Department of Land Conservation and Development, subject to judicial review, as provided in section 57 of this 2024 Act; or

(b) For Metro, the Department of Land Conservation and Development, subject to judicial review, as provided in section 57 of this 2024 Act.

(7) Sections 50 (1)(d) to (g), 52, 53, 54, 55 and 56 of this 2024 Act do not apply to a site addition made under this section.

SECTION 59. Reporting on added sites. A city for which an amendment was made to an urban growth boundary and approved under sections 49 to 59 of this 2024 Act shall submit a

report describing the status of development within the included area to the Department of Land Conservation and Development every two years until:

(1) January 2, 2033; or

(2) The city determines that development consistent with the acknowledged conceptual plan is deemed complete.

SECTION 60. Sunset. Sections 49 to 59 of this 2024 Act are repealed on January 2, 2033.

APPROPRIATIONS

SECTION 61. Appropriation and expenditure limitation to Department of Land Conservation and Development. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium ending June 30, 2025, out of the General Fund, the amount of $5,629,017, for deposit into the Housing Accountability and Production Office Fund, established under section 4 of this 2024 Act, to take any action to implement sections 1 to 5, 16, 38 to 41, 46 and 49 to 59 of this 2024 Act and the amendments to ORS 183.471, 197.015, 197.195, 197.335, 215.427 and 227.178 by sections 8, 9, 44, 45, 64 and 65 of this 2024 Act.

(2) In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium ending June 30, 2025, out of the General Fund, the amount of $5,000,000, for deposit into the Housing Accountability and Production Office Fund, established under section 4 of this 2024 Act, for the Housing Accountability and Production Office, established under section 1 of this 2024 Act, to provide technical assistance, including grants, under section 1 (2) of this 2024 Act and to provide required studies under section 5 of this 2024 Act.

(3) Notwithstanding any other law limiting expenditures, the amount of $10,629,017 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Department of Land Conservation and Development from the Housing Accountability and Production Office Fund established under section 4 of this 2024 Act.

SECTION 62. Appropriation and expenditure limitation to Housing and Community Services Department. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium ending June 30, 2025, out of the General Fund, the amount of $75,000,000, for deposit into the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(2) Notwithstanding any other provision of law, the General Fund appropriation made to the Housing and Community Services Department by section 1, chapter 390, Oregon Laws 2023, for the biennium ending June 30, 2025, is increased by $878,071 for administrative expenses related to the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(3) Notwithstanding any other law limiting expenditures, the amount of $24,750,000 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Housing and Community Services Department from the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

SECTION 63. Appropriation and expenditure limitation to Oregon Business Development Department. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Business Development Department, for the biennium ending June 30, 2025, out of the General Fund, the amount of $3,000,000, for deposit into the Housing Infrastructure Support Fund established under section 14 of this 2024 Act.

(2) Notwithstanding any other law limiting expenditures, the amount of $3,000,000 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Oregon Business Development Department from the Housing Infrastructure Support Fund established under section 14 of this 2024 Act.

SECTION 63a. Expenditure limitation to Department of Consumer and Business Services. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (6), chapter 354, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Consumer and Business Services, for Building Codes Division, is increased by $296,944, to support operations of the Housing Accountability and Production Office established under section 1 of this 2024 Act.

CONFORMING AMENDMENTS

SECTION 64. ORS 197.335, as amended by section 17, chapter 13, Oregon Laws 2023, is amended to read:

197.335. (1) [*An order issued under ORS 197.328 and the copy of the order mailed*] **The Land Conservation and Development Commission shall mail a copy of an enforcement order** to the local government, state agency or special district**. An order** must set forth:

(a) The nature of the noncompliance, including, but not limited to, the contents of the comprehensive plan or land use regulation, if any, of a local government that do not comply with the goals or the contents of a plan, program or regulation affecting land use adopted by a state agency or special district that do not comply with the goals. In the case of a pattern or practice of decision-making, the order must specify the decision-making that constitutes the pattern or practice, including specific provisions the [*Land Conservation and Development*] commission believes are being misapplied.

(b) The specific lands, if any, within a local government for which the existing plan or land use regulation, if any, does not comply with the goals.

(c) The corrective action decided upon by the commission, including the specific requirements, with which the local government, state agency or special district must comply. In the case of a pattern or practice of decision-making, the commission may require revisions to the comprehensive plan, land use regulations or local procedures which the commission believes are necessary to correct the pattern or practice. Notwithstanding the provisions of this section, except as provided in subsection (3)(c) of this section, an enforcement order does not affect:

(A) Land use applications filed with a local government prior to the date of adoption of the enforcement order unless specifically identified by the order;

(B) Land use approvals issued by a local government prior to the date of adoption of the enforcement order; or

(C) The time limit for exercising land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(2) Judicial review of a final order of the commission is governed by the provisions of ORS chapter 183 applicable to contested cases except as otherwise stated in this section. The commission's final order must include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the entire administrative record of the proceeding under review. Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but an error in procedure is not cause for reversal, modification or remand unless the court finds that substantial rights of any party were prejudiced thereby;

(b) The order to be unconstitutional;

(c) The order is invalid because it exceeds the statutory authority of the agency; or

(d) The order is not supported by substantial evidence in the whole record.

(3)(a) If the commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the commission's order [*under ORS 197.320 or subsection (2) of this section*] it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land use decisions or limited land use decisions, it shall, as part of its order, limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance. The commission may issue an order that requires review of local decisions by a hearings officer or the Department of Land Conservation and Development before the local decision becomes final.

(b) Any requirement under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the requirement is necessary to correct the violation.

(c) The limitations on enforcement orders under subsection (1)(c)(B) of this section do not affect the commission's authority to limit, prohibit or require application of specified criteria to subsequent land use decisions involving land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(4) As part of its order [*under ORS 197.320 or subsection (2) of this section*], the commission may withhold grant funds from the local government to which the order is directed. As part of an order issued under this section, the commission may notify the officer responsible for disbursing state-shared revenues to withhold that portion of state-shared revenues to which the local government is entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the amount of state planning grant moneys previously provided the local government by the commission. The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as outlined in this section and shall release funds to the local government or department when notified to so do by the commission or its designee. The commission may retain a portion of the withheld revenues to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the local government upon completion of requirements of the [*commission*] **enforcement** order.

(5)(a) As part of its order under this section, the commission may notify the officer responsible for disbursing funds from any grant or loan made by a state agency to withhold such funds from a special district to which the order is directed. The officer responsible for disbursing funds shall withhold funds as outlined in this section and shall release funds to the special district or department when notified to do so by the commission.

(b) The commission may retain a portion of the funds withheld to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the special district upon completion of the requirements of the commission order.

(6) As part of its order under this section, upon finding a city failed to comply with ORS 197.320 (13), the commission may, consistent with the principles in ORS 197A.130 (1), require the city to:

(a) Comply with the housing acceleration agreement under ORS 197A.130 (6).

(b) Take specific actions that are part of the city's housing production strategy under ORS 197A.100.

(c) Impose appropriate models that have been developed by department, including model ordinances, procedures, actions or anti-displacement measures.

(d) Reduce maximum timelines for review of needed housing or specific types of housing or affordability levels, [*including*] through ministerial approval or any other expedited existing approval process.

(e) Take specific actions to waive or amend local ordinances.

(f) Forfeit grant funds under subsection (4) of this section.

(7) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the [*commission's*] order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing [*and*] **or** order on an alleged violation.

(8) As used in this section, "enforcement order" or "order" means an order issued under ORS 197.320 or section 3 of this 2024 Act as may be modified on appeal under subsection (2) of this section.

SECTION 65. ORS 183.471 is amended to read:

183.471. (1) When an agency issues a final order in a contested case, the agency shall maintain the final order in a digital format that:

(a) Identifies the final order by the date it was issued;

(b) Is suitable for indexing and searching; and

(c) Preserves the textual attributes of the document, including the manner in which the document is paginated and any boldfaced, italicized or underlined writing in the document.

(2) The Oregon State Bar may request that an agency provide the Oregon State Bar, or its designee, with electronic copies of final orders issued by the agency in contested cases. The request must be in writing. No later than 30 days after receiving the request, the agency, subject to ORS 192.338, 192.345 and 192.355, shall provide the Oregon State Bar, or its designee, with an electronic copy of all final orders identified in the request.

(3) Notwithstanding ORS 192.324, an agency may not charge a fee for the first two requests submitted under this section in a calendar year. For any subsequent request, an agency may impose a fee in accordance with ORS 192.324 to reimburse the agency for the actual costs of complying with the request.

(4) For purposes of this section, a final order entered in a contested case by an administrative law judge under ORS 183.625 (3) is a final order issued by the agency that authorized the administrative law judge to conduct the hearing.

(5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final orders issued in contested cases by:

(a) The Department of Revenue;

(b) The State Board of Parole and Post-Prison Supervision;

(c) The Department of Corrections;

(d) The Employment Relations Board;

(e) The Public Utility Commission of Oregon;

(f) The Oregon Health Authority;

(g) The Land Conservation and Development Commission**, except for enforcement orders under section 3 of this 2024 Act**;

(h) The Land Use Board of Appeals;

(i) The Division of Child Support of the Department of Justice;

(j) The Department of Transportation, if the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;

(k) The Employment Department or the Employment Appeals Board, if the final order relates to benefits as defined in ORS 657.010;

(L) The Employment Department, if the final order relates to an assessment of unemployment tax for which a hearing was not held;

(m) The Employment Department, if the final order relates to:

(A) Benefits, as defined in ORS 657B.010;

(B) Employer and employee contributions under ORS 657B.150 for which a hearing was not held;

(C) Employer-offered benefit plans approved under ORS 657B.210 or terminated under ORS 657B.220; or

(D) Employer assistance grants under ORS 657B.200; or

(n) The Department of Human Services, if the final order was not related to licensing or certification.

SECTION 66. ORS 455.770 is amended to read:

455.770. (1) In addition to any other authority and power granted to the Director of the Department of Consumer and Business Services under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693 **and sections 1 to 5 of this 2024 Act**, with respect to municipalities, building officials and inspectors, if the director has reason to believe that there is a failure to enforce or a violation of any provision of the state building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes, the director may:

(a) Examine building code activities of the municipality;

(b) Take sworn testimony; and

(c) With the authorization of the Office of the Attorney General, subpoena persons and records to obtain testimony on official actions that were taken or omitted or to obtain documents otherwise subject to public inspection under ORS 192.311 to 192.478.

(2) The investigative authority authorized in subsection (1) of this section covers the violation or omission by a municipality related to enforcement of codes or administrative rules, certification of inspectors or financial transactions dealing with permit fees and surcharges under any of the following circumstances when:

(a) The duties are clearly established by law, rule or agreement;

(b) The duty involves procedures for which the means and methods are clearly established by law, rule or agreement; or

(c) The duty is described by clear performance standards.

(3) Prior to starting an investigation under subsection (1) of this section, the director shall notify the municipality in writing setting forth the allegation and the rules or statutes pertaining to the allegation and give the municipality 30 days to respond to the allegation. If the municipality does not satisfy the director's concerns, the director may then commence an investigation.

(4) If the Department of Consumer and Business Services or the director directs corrective action[*, the following shall be done*]:

(a) The corrective action [*shall*] **must** be in writing and served on the building official and the chief executive officers of all municipalities affected;

(b) The corrective action [*shall*] **must** identify the facts and law relied upon for the required action; and

(c) A reasonable time [*shall*] **must** be provided to the municipality for compliance.

(5) The director may revoke any authority of the municipality to administer any part of the state building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes if the director determines after a hearing conducted under ORS 183.413 to 183.497 that:

(a) All of the requirements of this section and ORS 455.775 and 455.895 were met; and

(b) The municipality did not comply with the corrective action required.

CAPTIONS

SECTION 67. The unit and section captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.

EFFECTIVE DATE

SECTION 68. This 2024 Act takes effect on the 91st day after the date on which the 2024 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate February 29, 2024

.....
Obadiah Rutledge, Secretary of Senate

.....
Rob Wagner, President of Senate

Passed by House March 4, 2024

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2024

Approved:

.....M.,....., 2024

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2024

.....
LaVonne Griffin-Valade, Secretary of State

Underline/strikeout Amendments

CHAPTER 19.900 LAND USE APPLICATIONS

19.911 Variances

19.911.2 Applicability

B. Ineligible Variances

A variance may not be requested for the following purposes:

1. To eliminate restrictions on uses or development that contain the word "prohibited."

2. To change a required review type.

3. To change or omit the steps of a procedure.

4. To change a definition.

~~5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.~~

~~6.~~ 5. To justify or allow a Building Code violation.

~~7.~~ 6. To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.

WS 2. 10/15/24
Presentations

SB 1537

City Council Work Session
October 15, 2024

Vera Kolias, Senior Planner

SB 1537 – Purpose

- Addresses housing supply and affordability
- Effective Jan 1, 2025 – Jan 2, 2032
  - Establishes a new Housing Accountability and Production Office;
  - Funds new infrastructure programs and other land readiness costs to support housing development;
  - Establishes a new state revolving loan fund; and
  - Provides a one-time Urban Growth Boundary (UGB) expansion tool, among other land use changes.

SB 1537 – Purpose

Requires cities to grant administrative adjustments (variances) to local siting and design standards for housing development

- Up to 10 distinct variances
- Specific conditions and timelines
- Only the applicant may appeal

Potential exemption

There is a potential exemption to being required to allow these variances.

Under SB1537

- Applicant qualifies for up to 10 variances IF development :
  - Is located in a Residential or Mixed Use zone
  - Meets minimum density of 17 du/acre
  - Includes a net increase in new housing units:
    - Single detached
    - Mixed Use with 75% residential
    - Manufactured dwelling parks
    - Accessory Dwelling Unit
    - Middle housing

Summary of Criteria

At least one of the following must apply

- Variances will:
  - enable development otherwise not feasible
  - reduce the sale or rental price
  - Increase the number of units
  - Enable provision of accessibility or visitability features
  - All units affordable to moderate income for 30 years
  - 20% affordable to low income for 60 years
  - All units affordable to moderate income for 90 years (co-op, land trust, etc)

List of Variances

Development Standards

All developments	All developments except SFR	
Common area/landscaping: 25% reduction	Reduction to Min. bike parking	Required balconies/porches
Parking minimum: (N/A)	Max. building height (20 ft/1 story increase)	Required recesses/offsets
Min. lot size: 10% decrease	Max. density - increase	Bldg orientation
Max. lot coverage: 10% increase	Ground floor residential – to allow	Bldg height transition
Side/rear setbacks: 10% decrease	Ground floor non-residential – to allow	

List of Variances

Design Standards

- Façade materials, color
- Façade articulation
- Roof forms and materials
- Entry and garage door materials
- Garage door orientation
- Window materials
- Total window area: 30% variance; 12% required

Review Process

- Nonconforming review = Type II
  - Only applicant may appeal
- The measure sunsets on January 2, 2032
  - Apply as needed

Exemption to SB 1537

If city can show that all of the listed variances are eligible for a variance, AND

That within the last 5 years the city has approved 90% of requested variances

THE CITY CAN REQUEST AN EXEMPTION

Exemption to SB 1537

Milwaukie can provide evidence of both -
except that current code prohibits variances to exceed maximum density in multi-family and single dwelling development.

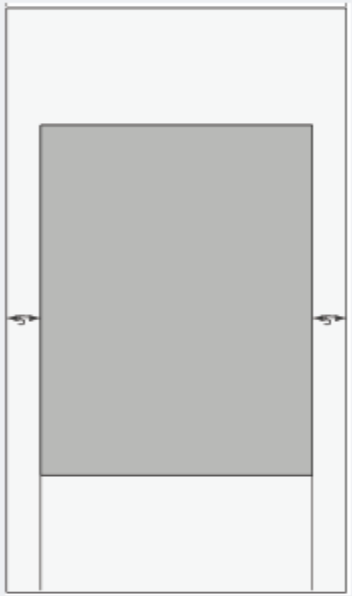
- Middle housing is exempt from maximum density limits (except townhouses)
- Planned Developments are only way to exceed density (20% limit)

Maximum Density

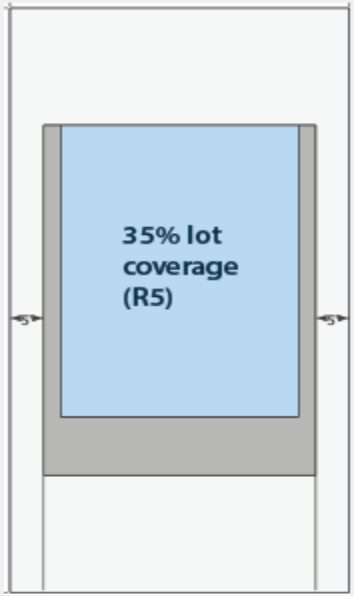
- Maximum density limits number of units, not size of the structure
- Code relies primarily on development standards to regulate site development
  - Setbacks, lot coverage, landscaping, tree code, etc.

Maximum Density

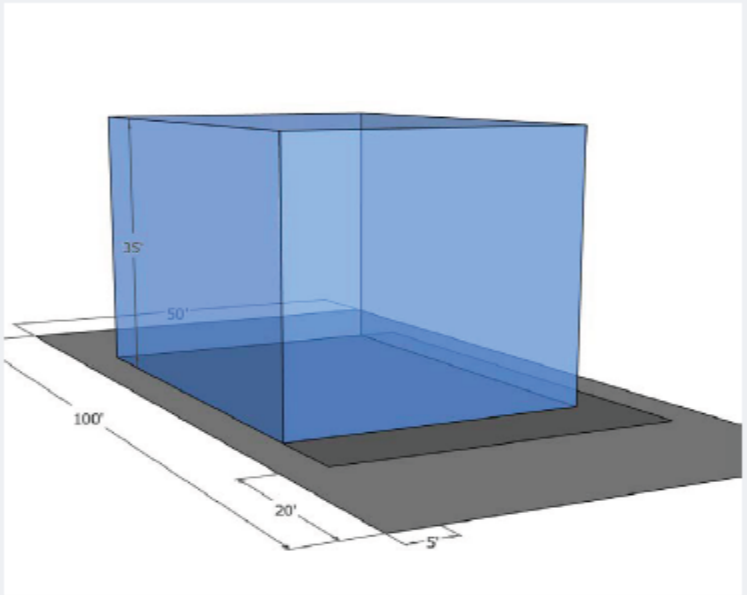
Setbacks



Lot Coverage



"Jello mold"



Maximum density

- For single detached dwellings, maximum density applies during land division only.
  - Density standards tagged to lot size
  - Would require variance to min. lot size in a subdivision

- City must allow variance to max. density (only in single dwelling and multi-dwelling units) to qualify for exemption
  - Benefit when compared to bulk variance applications

Recommendation

- Amend the code to allow a variance to maximum density.

- Apply for the exemption from SB 1537
  - To maintain control over standards that we care about

Key Questions

1. Does Council support agree with the recommendation to remove the prohibition on variances to maximum density for single detached and multi-unit developments?
2. If yes, and the city amends the code, should the city seek the exemption from the statute?

Contact Us

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