



CITY OF MILWAUKIE

Milwaukie Code Proposed Amendments: Oregon Senate Bill 1537 (residential maximum density)

December 2024
Primary Land Use File #ZA-2024-002

Summary of proposed code amendments

The proposed amendment would remove the prohibition on variances to maximum density in residential and mixed use zones so that the city could then apply for the exemption from SB 1537. A variance would still be required, so the recommendation would not eliminate maximum density, but would allow for the opportunity for flexibility via Type III review with a public hearing before the Planning Commission and public notice.

What is Oregon Senate Bill 1537?

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 2):

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.

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 variance¹) 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.

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 standards²;
 - 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 regulations³;
 - 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

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

² There is no requirement in the bill requiring specific substantiation of this claim.

³ Ibid.

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 following⁴:
 - 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
 - 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
 - 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.)

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.

The measure became 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. Density maximums only limit the number of units, not the Jello mold of the structure and its relationship to the lot.

The proposed amendment would remove the prohibition on variances to maximum density in residential and mixed use zones so that the city could then apply for the exemption from SB 1537. A variance would still be required, so the recommendation would not eliminate maximum density, but would allow for the opportunity for flexibility via Type III review with a public hearing before the Planning Commission and public notice.

An amendment to the following code section is proposed.

Municipal Code - Title 19 Zoning Ordinance

- Chapter 19.900 - LAND USE APPLICATIONS
 - Section 19.911 Variances

Please contact Vera Koliass, Senior Planner with the City of Milwaukie Planning Department, at 503-786-7653 or koliassv@milwaukieoregon.gov with questions or comments about the proposed code amendments and/or the code adoption process.

Reader Guide

Commentary

A commentary section precedes each section of code amendments. The commentary provides a non-technical summary of the proposed amendments and highlights proposed policy changes. The commentary section is labeled as commentary and presented in Comic Sans font (the same font of this sentence).

Amendments

Unless otherwise noted in the document, underlined text is proposed text, and ~~strikethrough~~ text is existing code language proposed for deletion. Standards shown in [brackets] are those that still require Planning Commission discussion and direction.

Context/Surrounding Code

The chapter, section, and subsection for the proposed code amendments are listed for reference in this document. Line breaks, like the one below, between subsequent amendments indicate that there is intervening text within the section or subsection that is not included in this document.

Please be advised that this document shows only sections of code for which amendments are proposed, along with limited surrounding sections for context. It does not include all sections of the Milwaukie Municipal Code.

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.
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