



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2540

Phone: 503-373-0050

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www.oregon.gov/LCD



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: September 21, 2015
Jurisdiction: City of Columbia City
Local file no.:
DLCD file no.: 002-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 09/18/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 48 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 002-15 {23929}
Received: 9/18/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: Columbia City

Local file no.:

Date of adoption: 9/17/15

Date sent: 9/18/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 07/29/15

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

Yes. A definition for townhouse was added to the draft proposal and the limits on square footage for buildings were removed.

Local contact (name and title): Lisa Smith, Planning Director

Phone: 503-463-9098

E-mail: lisasmithone@gmail.com

Street address: 1840 Second Street

City: Columbia City

Zip: 97053

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

No changes

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|-------------|----|--------|------------------------------------------------|
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Columbia City Ordinance 03-586-0, Chapter 7.25 Definitions and Chapter 7.50, Multi Family Housing.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: None identified.

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

The ordinance, staff Report, letter and memorandum identified in the ordinance are included.

ORDINANCE NO. 15-691-O

AN ORDINANCE AMENDING ORDINANCE NO. 03-586-O, THE COLUMBIA CITY DEVELOPMENT CODE, CHAPTER 7.25, DEFINITIONS, AND CHAPTER 7.50, HIGH DENSITY RESIDENTIAL ZONE; DECLARING AN EMERGENCY.

THE CITY OF COLUMBIA CITY ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 03-586-O, Chapter 7.25 Definitions, Section 7.25.030 Meaning of Specific Words and Terms, "Dwelling Types", Subsection f Townhouse, shall be amended to read as follows:

Townhouse: A dwelling unit, located in a row of two to four dwelling units, with each having its own front and rear access to the outside and attached side by side on separate lots with structural parts connected at the common property line.

Section 2. Ordinance No. 03-586-O, Chapter 7.50 (R-3) High Density Residential Zone, Section 7.50.010 Purpose shall be amended to read as follows:

7.50.010 Purpose. The R-3 zone is intended to provide minimum standards for residential use in areas of high population concentrations to maintain scale and separation and support safe, attractive, and quiet neighborhoods.

Section 3. Ordinance No. 03-586-O, Chapter 7.50 (R-3) High Density Residential Zone, Section 7.50.040 Development Standards, Subsection E shall be amended to read as follows:

- E. One principal building per lot or parcel except for multi-family developments and residential care facilities.

Section 4. Ordinance No. 03-586-O, Chapter 7.50 (R-3) High Density Residential Zone, Section 7.50.040 Development Standards, Subsection F shall be amended to read as follows:

- F. Buildings, portable storage structures and impervious surfaces shall not occupy more than 70% of the lot or parcel. No single building shall contain more than four dwelling units. Buildings shall have a separation of 12 feet from all adjacent buildings, except single family attached townhomes at the common property line.

Section 5. In support of the above amendments, the City Council hereby adopts the recommendations of the Planning Commission and the findings, conclusions and recommendations in the staff report dated August 17, 2015, a letter and attachments from Elaine R. Albrich, Stoel Rives, LLP dated September 15, 2015, a memorandum


dated September 14, 2015 presented at the Planning Commission meeting and the record of the public hearing conducted on September 15, 2015.

Section 6. Emergency Clause. Conditions in the City of Columbia City are such that this is necessary for the immediate preservation of the public health, peace and safety. An emergency is hereby declared to exist by unanimous vote of the Council, and this Ordinance shall be in full force and effect after its passage by the Council and approval by the Mayor.

Adopted by the City Council on this 17th day of September, 2015, by the following vote:

AYES: 5 NAYS: 0 ABSENT: 0 ABSTAIN: 0

Approved by the Mayor this 18th day of September, 2015.



Cheryl A. Young
Mayor

ATTEST:



Leahnette Rivers
City Administrator/Recorder

Effective date: September 18, 2015

MEMORANDUM

DATE: September 14, 2015

FROM: Lisa Smith, Planner, John A. Rankin, LLC,
As Planning Director for Columbia City

TO: Columbia City Planning Commission
Columbia City Mayor and Council

SUBJECT: Letter from Fair Housing Council of Oregon (FHCO) and Housing Land Advocates (HLA) dated September 1, 2015.

Columbia City currently permits more than one building on R-3 zoned lots for multi-family developments. The change in the proposed amendment would clarify that residential care facilities are also permitted to have more than one building on R-3 zoned lots.

No multi-family housing has been constructed in Columbia City since 1996. Therefore, no change in the Comprehensive Plan projections related to multi-family housing occurred until the Columbia Harbour LLC application proposed rezoning 1.3 acres of R-2, moderate density residential, to R-3, high density residential. When the projected housing needs and population projections were updated in 2009, the percentages of housing types remained as they were in 1996. The ordinance amending the Comprehensive Plan and rezoning the Columbia Harbour property would, if approved, result in a zone change reducing the City's ability to provide for single family/duplex units and increasing the ability to provide for multi-family units.

The State of Oregon has reviewed both proposals, including the updated projected housing analysis included in the Comprehensive Plan amendment for the zone change, and has not objected to approval. Staff has had several conversations regarding what is necessary to comply with the requirements for addressing Goal 10. Following those discussions, the State of Oregon provided the attached case law, which is hereby entered into the record.

The Planning Commission has been considering compliance with the State Goals, including Goal 10, in the process of hearings for Columbia Harbour LLC's application and now in this hearing related to amending the R-3 zone. To ensure that any future review authorities have all available information including the amendment to the comprehensive plan that updates the housing projections, staff is entering the entire record of Columbia Harbour LLC's application into the record of this legislative amendment by reference.

**LEGISLATIVE AMENDMENT STAFF REPORT
CITY OF COLUMBIA CITY, OREGON**

APPLICANT: City of Columbia City
1840 Second Street
Columbia, City 97018

APPLICATION: The City of Columbia City is preparing to adopt an ordinance amending Columbia City Development Code (CCDC) 7.50, High Density Residential Zone.

PUBLIC HEARINGS: A public hearing before the Planning Commission is scheduled on Tuesday, September 15, 2015 at 7:00 p.m.

A public hearing before the City Council is scheduled on Thursday, September 17, 2015 at 6:00 p.m.

- I. History:** Columbia City has a multi-family development on the west side of Highway 30 that was designed and constructed on a scale similar to some of the larger Columbia City single family dwellings. The individual buildings, which contain two stories, are no more than 80 feet in length, the footprint is no greater than 2,400 square feet and the buildings are separated from adjacent buildings by no less than 12 feet. The structures are larger than the surrounding single family residences, but when viewed from the highway, the structures do not appear to overwhelm the residences or block light or air circulation. In the last 15 years, there have been no multi-family dwelling units constructed in Columbia City. Based on existing development, current planning staff incorrectly assumed that the City had development standards in the Columbia City Development Ordinance related to the size of multi-family residential buildings, similar to the standards that the Scappoose Development Code includes for multi-family buildings.

In the preparation of a previous staff report for zone change from R-2 moderate density residential to R-3 high density residential, staff raised a question regarding an adopted City policy “to preserve Columbia City’s quality of life including village atmosphere, open space and recreational opportunities, urban bike and walking system, and beautiful natural setting and promote these attributes as an incentive for business development”. Staff determined that the phrase “village atmosphere” is undefined in the comprehensive plan or development code. The development standards for the R-3 zone fail to address the size or scale of permitted uses in the R-3 zone, including multi-family buildings, residential care facilities and connected townhomes. Therefore, staff was unable to determine if maximum development of property at R-3 standards would disrupt the village atmosphere as perceived by the City Council.

At the initial public hearing for the zone change, the applicant expressed concern regarding due process if the Council were to make a determination on this policy in the quasi-judicial process. After consideration of their concerns, the Planning Director drafted the attached amendment to

the Columbia City Development Code which addresses the size and separation of multi-family buildings, residential care facilities and attached townhomes. In their deliberations on the zone change application, the Planning Commission found that the issue of village atmosphere would be better addressed in the legislative process. The proposed amendment is being processed as a legislative amendment to the Columbia City Development code under the process for decision making in CCDC 7.160.

II. Proposed Action: Adopt an ordinance amending Columbia City Development Code (CCDC) 7.50, R-3 High Density Residential, attached to and incorporated into this staff report by reference.

III. Applicable Criteria and Evaluation of Criteria

A. Compliance with the Columbia City Municipal Code.

Findings: The proposed application is a legislative amendment. CCDC 7.15.020 establishes standards for legislative amendments to the Comprehensive Plan stating that “legislative amendments shall be in accordance with the procedures and standards set forth in Chapter 7.160”. CCDC 7.160 authorizes the Planning Director to initiate the legislative amendment process. This application has been initiated by the Planning Director.

This staff report and attachments serve as the required narrative for the application. If adopted by the City Council, this staff report shall serve as the required findings for the final decision. Pursuant to CCDC 7.160, the Planning Commission has scheduled a public hearing on September 15, 2015 and the City Council has scheduled a public hearing for September 17, 2015.

Because the proposed ordinance amends language in the Development Code, which serves as an implementing ordinance for the Comprehensive Plan, notice was submitted to the Department of Land Conservation and Development on July 29, 2015.

Public notice was published in the St. Helens Chronicle, the local paper of record, on August 26, 2015. Notice was posted on the bulletin board in front of the City Hall on August 26, 2015. Notice is also posted under the public notice section of the City’s website at www.columbia-city.org. The State of Oregon requires written notice to property owners if actions have the potential to either increase or decrease the value of property. Staff is not experienced in assessing property values and was unable to make this determination. Because Land Use Goal 1 is citizen participation and individual written notice supports participation, individual written notice was mailed to individual property owners of R-3 zoned property in the City on August 26, 2015. This written notice invites testimony on the matter and contains information on the availability of related documents. Copies of all notices are included in the project file. This staff report is being made available to the public on September 8, 2015.

Pursuant to Chapter 7.160, the Planning Commission may recommend that the City Council approve, deny or modify the proposal. The Planning Commission recommendation and the City Council decision are based on findings that the proposal conforms to the City's Comprehensive Plan and the proposal complies with all applicable statutory and ordinance requirements and regulations.

Conclusion: Based on adoption of the following findings, the application satisfies these criteria.

B. Compliance with the Columbia City Comprehensive Plan and related Statewide Planning Goals

1. Citizen Involvement (Statewide Goal 1):

Findings: The Columbia City Comprehensive Plan states the City will provide an opportunity for citizen involvement in the process and will publicize opportunities for citizen involvement. Review and discussion by the Planning Commission and the public hearing process provide opportunities for citizen involvement.

Public notice was published in the St. Helens Chronicle, the local paper of record, on August 26, 2015. Notice was posted on the bulletin board in front of the City Hall on August 26, 2015. Notice is also posted under the public notice section of the City's website at www.columbia-city.org. The State of Oregon requires written notice to property owners if actions have the potential to either increase or decrease the value of property. Staff is not experienced in assessing property values and was unable to make this determination. Because Land Use Goal 1 is citizen involvement and individual written notice supports involvement, individual written notice was mailed to individual property owners of R-3 zoned property in the City on August 26, 2015. This written notice invites testimony on the matter and contains information on the availability of related documents. Copies of all notices are included in the project file. This staff report is being made available to the public on September 8, 2015.

A public hearing before the Planning Commission is scheduled for Tuesday, September 15, 2015 at 7:00 p.m. A public hearing before the City Council is scheduled for Tuesday, September 17, 2015 at 6:00 p.m. This application complies with the objectives for citizen involvement by providing the above notice to the citizens.

Conclusion: Based on adoption of the above findings, the application satisfies these criteria.

2. Land Use Planning Process (Statewide Goal 2):

Findings: The planning process policies in the Columbia City Comprehensive Plan state the City will update the comprehensive plan to ensure that it remains consistent with local issues. Local issues were identified in the process of reviewing an unrelated land use application. This application complies with the objectives for the planning process by amending the Development Code to clarify the process and regulations.

Conclusion: Based on adoption of the above findings, the application satisfies these criteria.

3. Growth and Urbanization (Statewide Goal 14):

Findings: The proposed ordinance amends the adopted Development Code by limiting the footprint of multi-family buildings and residential care facilities to 2,400 square feet, limiting the length of buildings in the R-3 zone to 80 feet and requiring a separation of 12 feet between buildings. This would result in a development similar in scale to the multi-family housing previously constructed on the west side of Highway 30. The growth and urbanization policies of the Columbia City Comprehensive Plan provide a workable program for managing growth in order to achieve orderly development in the community. The proposed ordinance does not amend these policies. Establishing the maximum dimensions for structures in the R-3 zone supports orderly development of the community. This amendment, however, does not amend the implementing ordinances such as annexation, lot sizes and other regulations directly related to growth and urbanization.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

4. Resources (Statewide Goals 5, 6, 7, 8 and 13)

a. Open Spaces:

Findings: The Columbia City Comprehensive Plan policies for open space encourage plans for development that include preservation of open spaces and preservation and planting of trees to separate conflicting land uses. The proposed amendment does not amend implementing ordinances related to open space.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

b. Air, Water and Land Resources:

Findings: The objective of the Columbia City Comprehensive Plan policies for air, water and land resources is to enhance community livability by protecting air, water and land resources. The proposed Development Code amendment does not amend implementing ordinance related to air, water and land resources.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

c. Natural Hazards:

Findings: The objective of the Columbia City Comprehensive Plan policies related to natural hazards includes the protection of life and property from natural hazards due to flood and landslide. The proposed ordinance does not amend implementing ordinances related to natural hazards.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

d. Recreation:

Findings: The Columbia City Comprehensive Plan policies for recreation incorporate the findings and plans of the adopted Columbia City Master Parks Plan. The proposed ordinance does not amend these policies or the related implementing ordinances.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

e. Energy Conservation:

Findings: The Columbia City Comprehensive Plan policies for energy conservation require compliance with the Oregon State Building Code, encourage car and van pooling programs and promote pedestrian and bicycle transportation within the City. The proposed ordinance does not amend these policies or the related implementing ordinances.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

f. Historic Resources:

Findings: The Columbia City Comprehensive Plan policies for historic resources protect the community's historical character and sense of identity by conserving buildings and sites of historical significance. The proposed ordinance does not amend these policies or the related implementing ordinances.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

5. Economic Development (Statewide Goal 9):

Findings: The Columbia City Comprehensive Plan policies for economic development are generally related to diversification and improvement of the economy of Columbia City. It is the policy of Columbia City “to preserve Columbia City’s quality of life including village atmosphere, open space and recreational opportunities, urban bike and walking system, and beautiful natural setting and promote these attributes as an incentive for business development”. This policy states that Columbia City currently has a village atmosphere and desires to protect that village atmosphere. Establishment of limits on maximum sizes of structures in the R-3, high density residential zone, consistent with existing multi-family development continues the current development patterns in support of preserving the village atmosphere.

Conclusion: Based on adoption of the above findings, the application satisfies these criteria.

6. Housing (Statewide Goal 10):

Findings: The Columbia City Comprehensive Plan addresses the need for residential properties in the City’s urban growth boundary while recognizing the constraints on residential development including topography, proximity to St. Helens urban growth boundary and previous commitments to conflicting uses. The proposed amendment establishes the development standards for multi-family residential while ensuring that such construction is compatible with the desired character and livability of Columbia City’s residential zones.

Conclusion: Based on adoption of the above findings, the application satisfies these criteria.

7. Public Facilities (Statewide Goal 11):

Findings: The Columbia City Comprehensive Plan addresses the need to plan and develop public facilities in a coordinated, efficient and economical manner. This application does not amend the Comprehensive Plan policies or implementing ordinances related to public facilities.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

8. Transportation (Statewide Goal 12):

Findings: The Columbia City Comprehensive Plan seeks to encourage transportation improvements which support the community’s economic development, establish a street system consistent with orderly growth and provide a circulation system that is safe and efficient for both pedestrians and vehicles. This application does not amend the Comprehensive Plan policies or implementing ordinances related to transportation.

Conclusion: Based on adoption of the above findings, these criteria are not applicable.

Statewide Planning Goal 3 (Agricultural), 4 (Forest Lands), 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shorelands), 18 (Beaches and Dunes) and 19 (Ocean Resources) are not applicable to Columbia City.

IV. Recommended Action:

Based upon the findings contained in this staff report, the Planning Director recommends the Planning Commission adopt the findings in this staff report and recommend that the City Council approve the attached ordinance amending CCDC 7.50, R-3 High Density Residential.

Based upon the findings contained in this staff report and the Planning Commission recommendation, the City Council may adopt the findings in this staff report and approve the attached ordinance amending CCDC 7.50, R-3 High Density Residential.

City Council approval of an ordinance amending CCDC 7.50 shall be the final local action. Any party with standing may appeal the final local action to the Land Use Board of Appeals (LUBA) within 21 days. The regulations for filing an appeal to LUBA are addressed in ORS 197. Parties intending to appeal the final local action to LUBA are advised to seek legal counsel.

A handwritten signature in black ink that reads "Lisa Smith". The signature is written in a cursive, flowing style.

Lisa Smith, Planner (Columbia City Planning Director)
John A. Rankin, LLC

Attachment A: An ordinance amending Columbia City Development Code (CCDC) 7.50, R-3 High Density Residential zone.

2013 ORS § 197.296¹

Factors to establish sufficiency of buildable lands within urban growth boundary

- analysis and determination of residential housing patterns

- (1) (a) The provisions of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.
- (2) At periodic review pursuant to ORS 197.628 (Periodic review) to 197.651 (Appeal to Court of Appeals for judicial review of final order of Land Conservation and Development Commission) or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.
- (3) In performing the duties under subsection (2) of this section, a local government shall:
 - (a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; **and**
 - (b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 (Needed housing defined) and statewide planning goals and rules relating to housing, to determine the number of

units and amount of land needed for each needed housing type for the next 20 years.

- (4) (a) For the purpose of the inventory described in subsection (3)(a) of this section, buildable lands includes:
- (A) Vacant lands planned or zoned for residential use;
 - (B) Partially vacant lands planned or zoned for residential use;
 - (C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; **and**
 - (D) Lands that may be used for residential infill or redevelopment.
- (b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:
- (A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;
 - (B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; **and**
 - (C) The presence of a single family dwelling or other structure on a lot or parcel.
- (c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.
- (5) (a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:
- (A) The number, density and average mix of housing types of urban residential development that have actually occurred;
 - (B) Trends in density and average mix of housing types of urban residential development;
 - (C) Demographic and population trends;
 - (D) Economic trends and cycles; **and**
 - (E)

The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

- (b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.
 - (c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.
- (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or more of the following actions to accommodate the additional housing need:
- (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;
 - (b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or
 - (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

- (7) Using the analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.
- (8) (a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 (Definitions for ORS 197.295 to 197.314 and 197.475 to 197.490) to 197.314 (Required siting of manufactured homes).
- (b) The local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.
- (9) In establishing that actions and measures adopted under subsections (6) or (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section and is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section. Actions or measures, or both, may include but are not limited to:
- (a) Increases in the permitted density on existing residential land;
 - (b) Financial incentives for higher density housing;
 - (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
 - (d) Removal or easing of approval standards or procedures;
 - (e) Minimum density ranges;
 - (f) Redevelopment and infill strategies;

- (g) Authorization of housing types not previously allowed by the plan or regulations;
- (h) Adoption of an average residential density standard; and
- (i) Rezoning or redesignation of nonresidential land. [1995 c.547 §3; 2001 c.908 §1; 2003 c.177 §1]

...

Notes of Decisions

In urban growth boundary amendment process, no single land use goal factor is determinative or acts as threshold requirement to be met. Citizens Against Irresponsible Growth v. Metro, 179 Or App 12, 38 P3d 956 (2002)

§§ 197.295 (Definitions for ORS 197.295 to 197.314 and 197.475 to 197.490) to 197.307 (Effect of need for certain housing in urban growth areas)

Law Review Citations

18 WLR 75 (1982); 61 OLR 351 (1982)

§§ 197.005 (Legislative findings) to 197.430 (Enforcement powers)

Law Review Citations

10 WLJ 414-421, 474, 475 (1974); 56 OLR 270 (1977)

Chapter 197

Notes of Decisions

A comprehensive plan, although denominated a resolution, is the controlling land use planning instrument for a city; upon its passage, the city assumes responsibility to effectuate the plan and conform zoning ordinances, including prior existing zoning ordinances, to it. Baker v. City of Milwaukie, 271 Or 500, 533 P2d 772 (1975)

Procedural requirements of the state-wide planning goals adopted by the Land Conservation and Development Commission are not applicable to ordinances

adopted before the effective date of the goals. *Schmidt v. Land Conservation and Development Comm.*, 29 Or App 665, 564 P2d 1090 (1977)

This chapter, establishing LCDC and granting it authority to establish state-wide land use planning goals, does not unconstitutionally delegate legislative power where both standards (ORS chapter 215) and safeguards ([former] ORS 197.310) exist. *Meyer v. Lord*, 37 Or App 59, 586 P2d 367 (1978)

Where county's comprehensive plan and land use regulations had not been acknowledged by LCDC, it was proper for county to apply state-wide planning standards directly to individual request for partition. *Alexanderson v. Polk County Commissioners*, 289 Or 427, 616 P2d 459 (1980)

Issuance of a building permit was a land conservation and development action where county had no acknowledged comprehensive plan, land was not zoned and no previous land use decision had been made regarding the land. *Columbia Hills v. LCDC*, 50 Or App 483, 624 P2d 157 (1981), Sup Ct review denied

Nothing in this chapter grants the Land Conservation and Development Department authority to challenge local land use decisions made after comprehensive plan acknowledgment. *Ochoco Const. v. LCDC*, 295 Or 422, 667 P2d 499 (1983)

LCDC has authority in periodic review process to require local government to add specific language or provisions to its land use legislation to assure compliance with statewide goals and LCDC rules. *Oregonians in Action v. LCDC*, 121 Or App 497, 854 P2d 1010 (1993), Sup Ct review denied

Atty. Gen. Opinions

Authority of a land conservation and development commission to bind the state in an interstate compact or agreement, (1973) Vol 36, p 361; application of *Fasano v. Bd. of County Commrs.*, (1974) Vol 36, p 960; state-wide planning goal in conjunction with interim Willamette River Greenway boundaries, (1975) Vol 37, p 894; binding effect on governmental agencies of the adoption of interim Willamette River Greenway boundaries, (1975) Vol 37, p 894; application to state agencies, (1976) Vol 37, p 1129; preexisting ordinances during the interim implementing stage, (1976) Vol 37, p 1329; constitutionality of delegation to LCDC of authority to prescribe and enforce statewide planning goals, (1977) Vol 38, p 1130; effect of situation where similar petition is filed before both commission and a court, (1977) Vol 38, p 1268; consideration of availability of public school facilities in determination of whether to approve subdivision, (1978) Vol 38, p 1956

Law Review Citations

10 WLJ 99 (1973); 53 OLR 129 (1974); 5 EL 673 (1975); 54 OLR 203-223 (1975); 56 OLR 444 (1977); 18 WLR 49 (1982); 61 OLR 351 (1982); 20 WLR 764 (1984); 14 EL 661, 693, 713, 779, 843 (1984); 25 WLR 259 (1989); 31 WLR 147, 449, 817 (1995); 36 EL 25 (2006); 49 WLR 411 (2013)

Related Statutes³

- 195.145
Urban reserves
- 197.178
Development applications
- 197.299
Metropolitan service district analysis of buildable land supply
- 197.302
Metropolitan service district determination of buildable land supply
- 197.304
Lane County accommodation of needed housing
- 197.314
Required siting of manufactured homes
- 197.430
Enforcement powers
- 197.637
Department of Land Conservation and Development may request review by Housing and Community Services Department of certain local housing measures
- 197.766
Laws applicable to certain local decisions regarding urban growth boundary

¹ Legislative Counsel Committee, *CHAPTER 197—Comprehensive Land Use Planning I*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors197.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 197*,

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano197.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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FILED: December 31, 2008

IN THE COURT OF APPEALS OF THE STATE OF OREGON

GMK DEVELOPMENTS, LLC
and KEVIN WARNER,

Petitioners,

and

MIKE ADAIR,
JOANNE ADAIR,
NORMAN LEE, PHYLLIS LEE and WAYNE LEE,

Intervenors-Petitioners below,

v.

CITY OF MADRAS
and MADRAS LAND DEVELOPMENT COMPANY, LLC,

Respondents.

Land Use Board of Appeals
2008003

JOEL FULLER
and WILLIWAW, INC.,

Petitioners,

and

MIKE ADAIR,
JOANNE ADAIR,
NORMAN LEE, PHYLLIS LEE and WAYNE LEE,

Intervenors-Petitioners below,

v.

CITY OF MADRAS
and MADRAS LAND DEVELOPMENT COMPANY, LLC,

Respondents.

Land Use Board of Appeals
2008005
A139688

Argued and submitted on October 09, 2008.

Andrew H. Stamp argued the cause for petitioners GMK Developments, LLC, and Kevin Warner. With him on the joint brief was Bruce W. White for petitioners Joel Fuller and Williwaw, Inc.

Robert S. Lovlien argued the cause for respondent City of Madras. With him on the brief was Bryant, Lovlien & Jarvis, P.C.

Dana L. Krawczuk argued the cause for respondent Madras Land Development, LLC. With her on the brief were Steven P. Hultberg, Megan D. Walseth, and Ball Janik LLP.

Christopher D. Crean and Beery, Elsner & Hammond, LLP, filed the brief *amicus curiae* for League of Oregon Cities.

Before Landau, Presiding Judge, and Schuman, Judge, and Ortega, Judge.

LANDAU, P. J.

Affirmed.

LANDAU, P. J.

Petitioners seek review of a decision of the Land Use Board of Appeals (LUBA) affirming the City of Madras' amendment to its comprehensive plan. The amendment adopts a report that updates analysis of the city's supply of buildable land that is available to meet housing and commercial needs. According to petitioners, LUBA erred in affirming the city's decision adopting the report for two reasons. First, they complain that, because the report identifies a shortfall of buildable land, the city was obligated to revise its comprehensive plan to identify additional buildable land to satisfy the shortfall. LUBA erred, they argue, in failing to require the city to remedy the shortfall that its report identified. Second, petitioners assert that the report contains information that is at odds with the text of the comprehensive plan in certain respects. According to petitioners, LUBA should have required the city to revise the inconsistent portions of the comprehensive plan. We conclude that LUBA correctly held that the law does not require the city to take either action. We therefore affirm.

The basic facts are not in dispute and are set forth in LUBA's opinion:

"The city initiated a legislative process to establish urban reserve areas containing a fifty-year land supply. Accordingly, the city's consultants evaluated housing types, densities and needs over a 20-year and 50-year planning horizon. That evaluation resulted in the [Madras Urbanization Report (MUR)], an updated needs analysis and inventory for residential and employment land under Goal 9 (Economic Development) and Goal 10 (Housing). The MUR's housing needs analysis identifies a need for housing of all types for all income levels, including high-end housing, at the end of

the 50-year planning period. The MUR concluded that a portion of that identified need could be satisfied by a master planned community.

"In December, 2007, the city amended its comprehensive plan to adopt the MUR as a background document[.]"

The MUR projected that, over the course of the next 50 years, the city eventually will face a shortfall in the supply of buildable land, excluding public facilities land. The city, however, did not immediately designate urban reserve areas or expand the existing urban growth boundary (UGB) to meet anticipated future buildable land needs. The city instead decided first to adopt the MUR as a background technical document and set aside additional land or expand the UGB as needed in the future.

The MUR, which the city adopted, noted that the existing plan might contain "dated text related to population, employment and land needs." It also noted that, "[t]o ensure internal consistency, dated information must be removed from the existing comprehensive plan text and replaced with new information."

Petitioners are owners of property in the Madras area, located near, but not within, the UGB. They are interested in having their property included within the UGB to meet the city's housing needs. Before LUBA, they argued that, because the MUR identified a shortfall in buildable land by the end of the planning period, the city was obligated to amend the UGB--simultaneously with the adoption of the MUR--to meet that shortfall. Petitioners argued that, because the city chose to adopt the MUR as a comprehensive plan amendment, it was obligated to demonstrate, contemporaneously with the adoption of the MUR, that all applicable land use goals have been satisfied. According to petitioners, Goal 10 requires cities to designate and zone sufficient land to meet identified housing needs. They also argued that Goal 2 requires the city to adopt, contemporaneously with the adoption of the MUR, changes to other portions of the comprehensive plan that are inconsistent with the information contained in the MUR.

LUBA rejected both contentions. LUBA concluded that "nothing cited to us in the language of Goal 10 or its implementing rules requires the city to contemporaneously adopt a UGB amendment to remedy a projected shortfall in housing over a 20-year or 50-year period." As for petitioners' Goal 2 argument, LUBA noted that, although language in the guidelines to that goal states that the comprehensive plan should "form a consistent whole," those guidelines "are not mandatory approval criteria that must be satisfied in order to approve or deny a post-acknowledgement plan amendment."

On review, petitioners assign error to LUBA's disposition of both their Goal 10 and Goal 2 arguments, essentially reprising the arguments that they advanced before LUBA.

We begin with petitioners' Goal 10 argument. Goal 10 provides, in part, that "[b]uildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units." As LUBA correctly observed, nothing in the wording of the goal requires a local government to take any specific action in response to the adoption of a housing needs projection.

Petitioners insist that, if Goal 10 does not require such action, then ORS 197.307(3)(a) and OAR 660-008-0010--which implement Goal 10--do. ORS 197.307(3)(a) provides that,

"[w]hen a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need."

In a similar vein, OAR 660-008-0010 provides, in part, that

"[t]he mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection."

Neither of those provisions, as LUBA again correctly observed, requires that a local government expand a UGB or take any other action to increase the supply of land in response to a need projected to occur 20 or 50 years out into the future.

Pertinent, in that regard, is the fact that the legislature has adopted precisely such a requirement in ORS 197.296(6), which provides, in part, that, if a local government's housing need is determined to be greater than housing capacity, the local government is required to

"(a) [a]mend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. * * *;

"(b) [a]mend its comprehensive plan, regional plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. * * *; or

"(c) [a]dopt a combination of the actions described in paragraphs (a) and (b) of this subsection."

The problem is that section applies only to local governments with a population of 25,000 or more. ORS 197.296(1). It is undisputed that ORS 197.296 does not apply to the city in this case.

If Goal 10 already obligates local governments to amend urban growth boundaries to accommodate projected housing needs, as petitioners suggest, then ORS 197.296 is completely unnecessary and, in fact, a redundancy. "As a general rule, we assume that the legislature did not intend any portion of its enactments to be meaningless surplusage." *State v. Stamper*, 197 Or App 413, 418, 106 P3d 172, *rev den*, 339 Or 230 (2005). The fact that the legislature enacted ORS 197.296 strongly suggests that the existing regulatory framework was understood *not* to impose the requirements that petitioners now contend that it independently does. Moreover, the fact that the legislature

expressly provided that the requirements of ORS 197.296(6) apply only to cities with a population of 25,000 or more strongly suggests that the legislature intended that the same requirements *not* apply to cities with smaller populations. We therefore conclude that LUBA did not err in rejecting petitioners' contention that the city's approval of the MUR violated the requirements of Goal 10.

We turn to petitioners' Goal 2 argument. Goal 2 provides, in part, that, "[t]o establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions," all land use plans must include inventories and other factual information for each applicable statewide planning goal. Guidelines to Goal 2 further provide that "[a]ll of the elements [of a land use plan] should fit together and relate to one another to form a consistent whole at all times." As LUBA correctly pointed out, however, nothing in Goal 2 itself requires the sort of continuous data correction that petitioners urge us to impose in this case. And, while the guidelines exhort cities to be sure that the parts of land use plans "should fit together" to "form a consistent whole," nothing in those guidelines suggest that the exhortation is an approval criteria for the adoption of a background document. See *1000 Friends of Oregon v. LCD (Curry Co.)*, 301 Or 447, 452, 724 P2d 268 (1986) (land use guidelines are "suggested approaches designed to aid cities, counties, state agencies, and special districts in carrying out the goals"(internal quotation marks omitted)); *Downtown Comm. Assoc. v. City of Portland*, 80 Or App 336, 340-41, 722 P2d 1258, *rev den*, 302 Or 86 (1986) (state land use "guidelines" are "non-mandatory").

Aside from that, it is not clear to us that there is a conflict between the MUR and the balance of the comprehensive plan in the first place. As LUBA noted, although the city noted, in adopting the MUR, that some existing data might be rendered "dated," the MUR made clear that the newer information supersedes contrary data in the existing comprehensive plan.

We conclude that LUBA did not err in rejecting petitioners' contention that, in approving the MUR, the city violated Goal 2.

Affirmed.





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September 15, 2015

VIA EMAIL & HAND DELIVERY

ELAINE R. ALBRICH
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Columbia City Planning Commission
City of Columbia City
1850 Second Street
Columbia City, OR 97018

Re: Comments on Proposed Amendments to Ordinance No. 03-586-0

Dear Chair Niles and Commissioners:

Our office represents the Petersen family on land use matters and requests that this comment letter be placed in the record for proposed amendment to Columbia City ("City") Ordinance No. 03-586-0. We originally had significant concerns about the timing and content proposed in the City's amendments to Columbia City Development Code ("CCDC") Section 7.50 R3 High Density Residential Zone ("R3 zone"). After discussing these concerns with staff, staff are proposing revised language for the Planning Commission's consideration. We encourage the Planning Commission to recommend the revised R3 zone amendment to the City Council for approval.

For the record, we would like to provide the enclosed documentation to illustrate how the revised R3 zone amendment promotes attractive high-density residential development. The originally proposed development standard requiring that "no single building be greater than 80 feet in length or have a foot print greater than 2,400 square feet" unnecessarily restricted the design options for high-density residential development, the very type of development the R3 zone is intended to promote. The dimensional restriction was uncommon in similar zones around the region (see enclosed table), and in practice, the development standard would have force development in the R3 zone to conform to the same development configuration as the fourplex shown in Photo 1 below. There would have been little opportunity for attached garages, leaving only outside parking or detached garages. It also would have force townhomes to be small (26-feet or less) with only room for single car garages (see Photo 2 below).



Columbia City Planning Commission
September 15, 2015
Page 2

There is a different approach that would continue to promote the City's intent of promoting "safe, attractive and quiet neighborhoods" while at the same time allow for greater flexibility in designing planned residential developments. Instead of placing new dimensional restrictions in the R3 development standards, the City can more specifically direct the type of residential development the City would like to see by amending the permitted uses in CCDC 7.50.020. This is exactly what the City is proposing in its revised R3 zone amendment. We support this revision and believe that it will help facilitate the development of higher-density residential areas without undermining the City's desire for safe, attractive neighborhoods. Examples of the type of development feasible under these new standards are illustrated in Photos 3 and 4 below.

Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink that reads "Elaine R. Albrich".

Elaine R. Albrich
ELA/kct

cc: Petersen Family
Lisa Smith



Photo 1

Existing fourplex in Columbia City. No attached garages, exterior parking & detached garages.



Photo 2

Recently built (+/- 2014) townhomes built in Scappoose with the overall building size less than 80 feet in length.



Photo 3



Photo 4

Prepared by Al Petersen

Cities normally have various restrictions on the size and bulk of buildings. The standard restrictions are dwelling units per acre, minimum lot area, minimum lot dimensions, setbacks, maximum lot coverage, and maximum impermeable surface coverage.

Columbia City already has a highly restrictive height restriction, less than every other city that we can find. Additionally Columbia City uses dwelling units per acre, building setbacks, lot coverage, and with the current proposal an impermeable surface coverage.

The current proposal, however, goes far beyond the norm by imposing very specific building size restrictions.

We have studied the zoning restrictions of fifteen (15) other cities around Oregon (the cities were randomly selected and have their zoning ordinances available online). None of those cities impose any such specific dimensional and square footage restrictions other than in the Downtown Overlay zone in Scappoose (referred to in the staff report).

It must be noted that none of the residential zones of Scappoose contain any such dimensional restrictions. Only the Downtown Overlay zone contains dimensional and square footage restrictions.

Restrictions in Moderate or High Density Residential Zones of other Oregon Cities

		Height	Maximum # of attached dwellings (townhomes)	Maximum area	Dimension
	Columbia City (proposed)	24'		2400 sq. ft. max.	80' max
1	Lake Oswego	28' flat lots 35' sloped lots			
2	West Linn	35'			<u>35' minimum width</u> (each attached unit)
3	Sisters	30'			<u>35' minimum width</u> (each attached unit)
4	Mc Minnville	35'			
5	Hood River	35'	4		
6	Bend	35'			
7	Baker City	35' 40' sloped site	4 or 6 (with other restrictions)		
8	Roseburg	35'	8		
9	Monmouth	32'	6		
10	Silverton	35'	6		
11	Coburg	35'	4		<u>30' minimum width</u> (each attached unit)
12	Grants Pass	35'			<u>30' minimum width</u> for end units,
13	Sweet Home (high density zone) (other zones)	40' 35'			<u>25' minimum width</u> (each attached unit)
14	St Helens	35'	5		
15	Scappoose (High Density Zone) (Moderate Density Zone) (Downtown Overlay)	35'	8 4 4	4000 sq. ft. max	80'