

## City of Eugene Clear and Objective Housing Approval Criteria Update Summary of Email Comments Received

August 2, 2018

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### Introduction

The City received 25 emails from stakeholders from June 11 through July 3, 2018 as follow-ups to focus groups conducted for the Clear & Objective Housing Approval Criteria Update project. Comments addressed housing issues generally, both directly and indirectly related to the clear and objective approval criteria for needed housing. Comments included here were distilled by the consultant and reported in the aggregate, without attribution to any specific individuals or groups. Comments here are not weighted; comments voiced by multiple stakeholders were not given additional weight or repeated compared to comments shared by a single stakeholder, instead each comment is included here once.

Comments have been revised to use consistent terminology to describe the City's existing code structure. The two residential review tracks in the Eugene Code include the "Needed Housing" track with clear and objective criteria in compliance with state requirements in ORS 197.307, and the "General" track which includes more discretionary review criteria and allows for more design flexibility to meet those criteria. These two tracks are referred to here as the "clear and objective track" and the "discretionary track."

### 'Needed Housing' Interpretations

- Disagreement whether all housing is needed housing under city and state law, and position that needed housing should only include specific categories where Eugene has shown a housing need
- Disagreement whether housing is too expensive, and whether all housing is needed in order to drive prices down

### Two-track Review System and Relationship Between Criteria in Each Track

- Questions about whether clear and objective criteria are needed for all five of the studied land use reviews, or whether more discretionary processes like PUDs and CUPs may not need clear and objective criteria
- Questions about how residential-specific approval criteria for these reviews apply to projects that do not include a residential component, since many of these reviews are used for non-residential projects as well
- Recommendation to compare discretionary and clear and objective criteria for each of the five land use reviews, to develop parallel review tracks that are identical or as consistent as possible

- Recommendation to review all criteria for a given topic, such as pedestrian connectivity and safety, across all review types and both tracks, for greater consistency and to reduce duplication
- Recommendation to consider developing a single set of centrally located approval criteria, and cross-referencing for individual land use reviews rather than duplicating the criteria in the different review chapters as is currently set up, to avoid minor variation and inconsistency between chapters
- Recommendation to understand the difference between criteria that require conformance versus those that require exaction, assertion that criteria **can** require certain features such as safe emergency access exist (conformance) but cannot require that a developer pay for such features (exaction)
- Recommendation to develop clear and objective review tracks for cluster housing and Willamette Greenway permits
  - Concern that if Willamette Greenway standards cannot be applied because they are not clear and objective, that it will have a negative environmental impact
  - Concern that criteria for Willamette Greenway permits are discretionary, and applicants do not have a clear and objective review option as required by state law
  - Concern that charging a fee for Willamette Greenway permits for residential development when no standards may be applied, due to lack of clear and objective standards, may constitute an unreasonable cost and delay

### **Planned Unit Developments (PUDs)**

- Examples provided where application of clear and objective criteria would have significantly reduced or eliminated residential development feasibility for a site, specifically criteria requiring a 30-foot perimeter buffer, prohibiting grading on slopes at or greater than 20%, and prohibiting development above 900 foot elevation. Some concern that the cumulative effect of these regulations forces applicants to use the discretionary track in violation of state law requiring clear and objective review option
- Desire for consistency between approval criteria for PUDs and subdivisions
- Desire for consistency between clear and objective and discretionary criteria for:
  - Natural resource and tree protection, particularly above 900 feet
  - Prohibition on grading on slopes over 20%
  - Provisions for connectivity including two access roads
  - Provisions not to impede emergency vehicle access both on site and within ½ mile
  - Provisions to minimize off-site impacts to all vehicular and non-motorized traffic both on site and within ½ mile
  - Requirement for geological and geotechnical analyses with tentative PUD
- Concern that the 40% open space requirement for PUDs in the South Hills Study area required under the clear and objective approval criteria has no equivalent in the discretionary criteria, and puts a significant amount of land off-limits to development in contradiction to

state requirements for all land developable under discretionary criteria to also be developable under clear and objective criteria

- Concern that the requirement for PUDs to be within ¼ mile of “accessible recreation area or open space” under the clear and objective approval criteria has no equivalent in the discretionary criteria, and can preclude development of a site under clear and objective criteria if such a facility is not located nearby. Concern that the alternative option to provide one acre of open space on site causes large sites to lose an acre that could have been developed for housing, and may entirely prevent development of smaller sites under the clear and objective track.
- Concern that criteria around “significant risk” and “minimal off-site impacts” in the discretionary review track have not been adequately defined and applied to development to minimize impacts to pedestrians, bicyclists and other non-motorized road users
- Concern that final PUD approval criteria do not include requirement to complete or bond for public improvements required for the PUD, as is included in the approval criteria for CUPs and final subdivisions
- Concern that final PUDs are being approved with conditions of approval to complete public infrastructure requirements prior to final occupancy, rather than strictly applying the criteria to complete *or bond for* the improvements at the time of final PUD review
- Question about whether a clear and objective track is needed or appropriate for PUDs because of their inherently discretionary nature
- Concern about requirements to complete tentative PUD, final PUD, tentative subdivision, and final subdivision, each with its own filing fee and 120-day review clock, and option only to combine the tentative subdivision and final PUD review. Some concern that three separate review phases, plus time in between phases to prepare application materials, creates “unreasonable cost and delay” under state laws for clear and objective standards for needed housing. Recommendation to move to two review phases, tentative PUD and subdivision, followed by final PUD and subdivision.
- Observation that approval criteria for PUDs and subdivision overlap in many aspects, and there may be opportunities to consolidate review

### **Specific Development Issues and Potential Impacts**

- Perimeter:
  - Concern that 30-foot perimeter buffer requirement in the clear and objective PUD criteria, required for land in South Hills Study area subject to PUD provisions, puts a portion of every site off-limits for development under the clear and objective track, or forces sites to develop under discretionary track
  - Concern that 30-foot buffer limits density that can be developed on smaller sites
  - Concern that 30-foot buffer is interpreted with discretion by the City, sometime interpreted not to apply adjacent to streets, sometimes interpreted to prohibit fences at the outside edge of the buffer, and sometimes interpreted to allow undergrounding of utilities
- Slopes and high elevations:

- Concern that land over 900 feet elevation is prohibited from fully developing under clear and objective criteria, and that such parcels cannot be divided at all under the clear and objective criteria
- Concern that prohibiting grading on slopes that meet or exceed 20% as an approval criteria for clear and objective PUD and subdivision review is ambiguous because the code does not define grading
- Concern that prohibition on grading for slopes that meet or exceed 20% can preclude development of a site under the clear and objective track for PUDs and subdivisions, or significantly limit the site area that can be developed, in cases where grading would be required to gain access to the site (preventing development of any of the site under clear and objective criteria), on those portions of the site with steep slopes (preventing development of a portion of the site), and on those portions of the site that cannot be reached without grading steep slopes to access them (preventing development of a portion of the site)
- Concern that 20% slope threshold is too low, given that the city BLI includes land up to 30% slopes as buildable
- Utilities and public improvements:
  - Concern that requirements to complete infrastructure are not uniformly required in the approval criteria for all land use reviews, and is only required for CUPs, site review, final partitions, and final subdivisions
  - Concern that requirements for privately engineered public improvements (PEPIs) can be waived to sidestep requirements for public improvements, concern that requirements applied through a public review process should only be modified through a similar public review process rather than an administrative engineering review
- Streets and connectivity:
  - Concern that a single, dead-end street is not adequate access for a new development, and concern that previous developments have been approved with such inadequate access because of contention that developer could not be required to improve the access road offsite
- Traffic :
  - Desire to prioritize review of traffic impacts as a necessary review component to ensure community safety, and concern about potential lack of review of traffic impacts under clear and objective reviews
  - Concern that recent Hearing Official's contention that Traffic Impact Analyses (TIAs) were not clear and objective should not be represented as a final prohibition on applying TIAs to projects developed under clear and objective criteria
  - Concern that TIA approval criteria are discretionary, including the triggers for a TIA, whether remedies are required in conjunction with development, and what those remedies must be
  - Concern that TIAs are not an explicit approval criteria for any of the land use reviews under the clear and objective tracks

- Concern that scope of TIAs should be expanded to include evaluation of emergency access and response, evaluation of bicycle and pedestrian safety, evaluation of a broader study area, impacts to existing development, and consideration of full project build-out potential, and should be required for all projects developed under a clear and objective track
- Opinion that traffic impacts are a major community safety issue
- Emergency access:
  - Concern that approval criteria in the discretionary track do not fully define or apply language around “significant risk to public health and safety” and “impediment to emergency response”
  - Desire that emergency access be considered not just for the proposed development, but that impacts to emergency access for surrounding development also be reviewed
  - Desire to address multiple aspects of emergency access, including provisions for fire and medical services, provisions to enter and exit the site, provisions to operate on site, and provisions to protect emergency access and services for off-site properties as well
  - Concern that Oregon Fire Code standards for “Fire Apparatus Access Roads” have not been appropriately applied to recent residential developments
- Bike/ped connectivity:
  - Desire for greater pedestrian protection applied more broadly to all non-motorized road users, particularly for wheelchair users, children, seniors, and persons with vision or hearing impairments
  - Desire for greater clarity about what kinds of offsite improvements to benefit both future residents of a development and the surround neighborhood residents
- Off-street parking:
  - Concern about needing to evaluate impacts to on-street parking
- Open space:
  - Desire to preserve open space and trails as important resources
- Ridgeline:
  - Concern that land within 300 feet of the ridgeline, interpreted to be the UGB, cannot be developed under clear and objective criteria, which sometimes encompasses an entire site and forces development under the discretionary track
- Trees:
  - Preference to protect trees even on private property, particularly large or unique trees
  - Opinion that significant tree inventory is needed
  - Preference for vegetation protection
  - Concern that the city applies discretionary tree preservation standards in Chapter 6 to needed housing projects reviewed under clear and objective criteria, and that those standards are unacknowledged land use regulations

## **General Observations on Housing Development Process and Development Standards**

- Desire to see “compatibility” defined to include diverse infill development
- Preference to prioritize community livability over development feasibility
- Preference that criteria should include some restriction and requirement to balance market forces in favor of development, in order to preserve livability
- Preference to protect against threats to public safety, the environment and neighborhood livability
- Preference to develop comprehensive criteria through a thorough process, rather than creating loopholes for special interests, or being subject to successive LUBA appeals that invalidate portions of the criteria
- Recommendation to include approval criteria that all application requirements be met for each of the review types
- Observation that Planning Commission does not have an option to evaluate whether criteria for applications before them do or do not meet state requirements for clear and objective standards, and opinion that there should be a process for Planning Commission to directly apply state requirements in order to reject any criteria that does not meet the clear and objective requirements

## **Project Scope and Process**

- Opinion that stakeholder engagement is a key to success of project, and should be supported through engagement at every phase of the project
- Concern that stakeholders were segregated into focus groups with similar ideas, and desire for mixed groups to generate more genuine dialogue
- Questions about goals and scope of the audit, relationship of audit to other project tasks
- Desire for greater stakeholder engagement in the audit to more fully identify concerns about the existing process in addition to the focus groups, and concerns that topics were not fully addressed in the focus groups
- Appreciation for engaging residents as stakeholders in the project, and belief that greater participation in the process can help reduce conflict over adoption and implementation
- Request for more background on the existing code, including comparison of the clear and objective to discretionary criteria, and all related sections including final approval criteria and other applicability sections, to inform stakeholder participation in the focus groups and any subsequent events
- Appreciation of the comparison of the discretionary and clear and objective criteria for each review type assembled by the City
- Request for materials to spatially illustrate impacts of existing regulations on development feasibility, specifically infill development
- Desire to see summary of all issues raised by stakeholders to confirm that issues were adequately captured

- Desire to comprehensively examine both the clear and objective criteria *and* the discretionary criteria with this project, that they are interrelated and must be considered together to get a balance with more flexible criteria in the discretionary track
- Questions about whether the project will include review of conditions and processes that apply to residential development, as well as criteria
- Expressed confusion over difference between focus groups and working groups, and timing for each
- Desire for ongoing stakeholder engagement in drafting preferred concepts, including interest in participating in working groups
- Recommendation to develop a solid foundation for the code update by examining “good” and “bad” elements of residential development, using a similar process to that used to develop the Jefferson Westside Special Area Zone
- Concern that project is proceeding too quickly, without giving stakeholders and the public adequate time to understand background issues, which may not serve the process well
- Concern that deadline is too aggressive without knowing the full scope of the issues to be identified in the audit
- Concern that timeline is arbitrary and unrealistic, and some preference for thorough and well-vetted project objectives to guide project forward
- Desire to prioritize certain critical code fixes, such as requirements for review of traffic impacts, roads, fire access, trees and Willamette Greenway, as soon as possible, while taking more time for other issues as needed
- Recommendation to break code review into smaller pieces to allow more thoughtful review, such as a few criteria each month, while maintaining overall project schedule
- Recommendation that project continue moving forward on identified timeline, some opinions that project includes adequate public engagement opportunities without rushing any participants
- Concern that longer projects discourage public participation through attrition, and that some people may not have capacity or privilege to participate but they still care about the outcomes to support residential development

### **General Observations**

- Comparison to debate over whether to permit ADUs in the R-2/3/4 zones to implement SB 1051, concern that time was wasted and solutions could have been identified sooner in the process if there had been greater community engagement
- For ADUs, desire to require owner occupancy, definition of affordability, setbacks and height limits consistent with existing structures that consider aesthetics and views
- Observation that code lacks a process to allow homeowners to pursue their rights to develop accessory dwelling units under new state ADU regulations